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THE Nation.

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THE EDITORS

NOVEMBER 15, 2010
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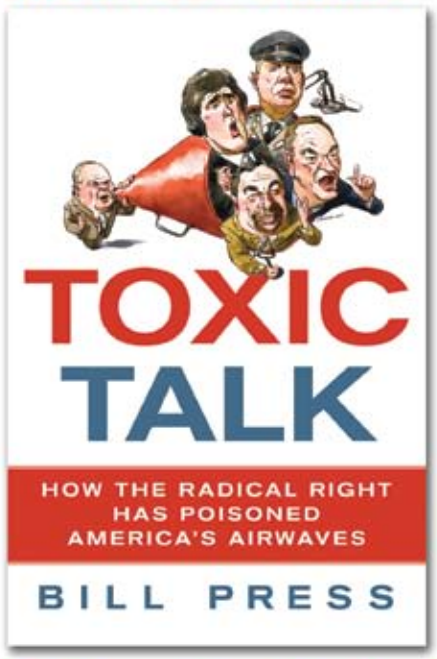

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Letters

Russ Feingold: KO-ing the Money Power

Las Vegas

John Nichols's cover story "Russ Feingold, the Senate's True Maverick" [Oct. 11], on Feingold's fight for re-election, aroused numerous emotions in me:

§ Sadness that too many Americans—and Wisconsinites—do not recognize a great public servant when they see one.

§ Anger that while Feingold acts in the best tradition of the Wisconsin Progressives, his opponent's camp acts in the tradition that produced another senator, Joe McCarthy.

§ Amazement that even Nichols suggests only that John McCain's "independence" was mere "attentiveness to the media," when it's clear that McCain never was a maverick.

§ Hope that, just as my senator, Harry Reid, who has done so much to advance the president's agenda and gotten so little credit, shows signs of overcoming his hateful opponent, Feingold can do the same.

Michael Green

His Silver Tongue Has Turned to Tin…

Philadelphia

If there is one matter that seems beyond dispute, it's that President Obama has failed to use his silver tongue to the advantage of his program and his party. He should have started, on January 21, 2009, to weave a Democratic narrative: who we are, what we've done in the past, what we stand for. If he had done that, framed the issues to our advantage, it would have been much more difficult for the other side to get credence for its distortions. Now the Republicans are telling the stories, and their versions are prevailing. Look how Obama turned things around with his speech on race; why doesn't he use his verbal gifts on other issues? There is nothing—not money, not the GOP, not Congress—to prevent him from speaking out loud and clear. As one of your readers said ["Letters," Oct. 11], "We must fight the right by shouting out what the left has won for us all." Yes!

Tracy Kosman

letters@thenation.com

Waiting for Superman—or Mr. Chips?

New York City

As a teacher for thirty-four years, I was interested to read "Grading *Waiting for Superman*" by Dana Goldstein [Oct. 11]. She cites the Finnish school system as the best in the world. Ask any teacher what he or she would want if given one thing, and the answer is: reduced class size. Even bad teachers improve with smaller classes. So I looked up statistics on Finnish schools. The ratio of teachers to students in elementary grades is 15:1, lower in high school. The answer to the question, "What should we do first?" is clear: reduce class size. The Finns do it. Why can't we?

David Fischweicher

Baltimore

As a Baltimore Public Schools teacher, I thank you for Dana Goldstein's excellent review. *Waiting for Superman* is just another example of how teachers are being brutalized in the media in an effort to destroy the teachers unions. I would argue only with Goldstein's focus on the need for union organizing to appeal to the energetic, enthusiastic young teachers who pour into our schools from Teach for America. Most of these teachers stay for only a few years before they get on with their life (TFA is often dubbed Teach for Awhile), so this is hardly the way to build a long-term teaching force.

David Kandel

Oviedo, Fla.

Recently I watched the networks relentlessly pushing *Waiting for Superman*, along with a crisis mentality about the state of education in this country. I was reminded of Naomi Klein's book *The Shock Doctrine: The Rise of Disaster Capitalism*. CNN's John Roberts commented, "America's schools are in desperate need of a rescue."

But do not despair. There is no shortage of free-market education profiteers poised to capitalize on this media-induced crisis and "rescue" the schools.

Eugene B. Pickler

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Time for a Cease-Fire

Can talks with the Taliban end the war in Afghanistan? If President Obama is serious about finding out, it's time to declare a cease-fire on US and NATO combat operations, halt the night raids by US Special Forces and stop the drone-fired missile attacks throughout the Afghanistan-Pakistan theater.

Over the summer, after long resisting the idea of talks with Taliban leaders, the Obama administration began to support President Hamid Karzai's plan for reconciliation. Previously, the administration had argued that the Taliban would never enter into serious talks until US forces dealt them punishing blows to reverse their momentum. Now, apparently convinced the escalation ordered last year can't succeed, the United States and NATO are ferrying Taliban commanders back and forth between Pakistan and Afghanistan for what are described by Karzai's government as preliminary talks. "This is how you end these kinds of insurgencies," declared US commander Gen. David Petraeus.

EDITORIAL

Preliminary or not, the talks didn't come out of the blue. For several years there have been contacts between the Afghan government and the Taliban in places like Saudi Arabia and the United Arab Emirates, with support from Britain and France. Over the past year Karzai has insisted he'd talk to everyone from Mullah Omar, the Taliban's top chieftain, on down, and in January he caught the United States off guard by formally launching a peace initiative at a conference in London. Since then, with little or no support from the United States, Karzai has held a *jirga* to build domestic support for his outreach to the Taliban.

Virtually every faction of the insurgency is engaged, including Gulbuddin Hekmatyar's Islamic Party, which came to Kabul with a peace plan; the militant Haqqani network; and the Quetta Shura. It's unclear what's been accomplished and whether the contacts can lead to a formal peace process. But it *is* clear that a political agreement is the only way to end the war. It's encouraging that the Obama administration has abandoned its earlier stubborn refusal to facilitate such talks.

What would an accord entail? In exchange for a halt to the war, a timeline for a US withdrawal and a share of power in a rebalanced Afghan government, the Taliban could agree to end their insurgency, break all ties with Al Qaeda and negotiate a new national compact with all elements of Afghan society. That compact would have to be supported, perhaps even brokered, by the UN and the international community, and it would need strong support from Afghanistan's neighbors, especially Pakistan but also India, Iran, Russia, China, Saudi Arabia and the Central Asian republics.

Enormous obstacles remain. First, the US military onslaught along with lethal raids by Special Forces and constant drone attacks, undermine peace talks (see Jeremy Scahill's report on page 17). While devastating to low-level and district Taliban commanders, the offensive creates more enemies than it kills. And despite the tripling of US forces since 2009, it's clearer than ever that the war can't be won militarily. In fact, Taliban control over vast areas of Afghanistan has increased since Obama ordered the escalation.

Second, Karzai's corrupt government is a weak partner. Even if the Taliban and their allies are interested in serious negotiations, it's unclear whether Karzai can deliver. Erratic and mercurial, he has tried to cast himself as a nationalist willing to stand up to the United States: since last spring, he's threatened to join the Taliban himself, he's bitterly criticized US forces for killing civilians and he's

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promised to kick private military contractors out of the country, over US objections. But he's lost credibility with broad swaths of the public, especially the non-Pashtun minorities. Elements of the old Northern Alliance, which fought the Taliban in the '90s, are reportedly rearming with support from India and the Central Asian states in anticipation of another civil war if Karzai makes a deal with the Taliban. Avoiding such a catastrophe will require intensive regional diplomacy.

Third, if Pakistan does not support talks, they will almost certainly fail. In the 1990s Pakistan created the Taliban as a tool for asserting its muscle, especially against India, and Pakistan still exerts great influence over the insurgency. An earlier round of talks foundered in February when Pakistan's intelligence service arrested nearly two dozen Taliban members who'd been in contact with Karzai, including Mullah Baradar, the Taliban's number-two official. Because Pakistan can bring all, or nearly all, of the Taliban to the bargaining table, winning its support is critical. Getting India onboard is just as important. India fears Pakistan-sponsored terrorism, and it doesn't want Afghanistan to fall under Pakistan's sway. A key goal during Obama's coming visit to India will be to enlist India's support for a deal.

As revealed in Bob Woodward's book *Obama's Wars*, the president clearly wants out of Afghanistan. "I'm not doing a long-term nation-building effort. I'm not spending a trillion dollars," he declared. "I can't let this be a war without end." If Obama truly wants to end the war, the current round of talks holds great promise. The president has to order his entire team to seize the opportunity. A cease-fire would be a good way to start.

(G)rêve général(e) in France

The French Parliament may have passed President Nicolas Sarkozy's controversial law on pension reform, and the nationwide protests against it may have eased, but as we go to press, they are far from over. The Socialist Party has declared it will seize the Constitutional Council, France's highest judicial authority, to check on the constitutionality of the law, and more national demonstrations have been planned in the coming weeks. Twenty percent of gas stations are still out of fuel, and wildcat actions continue to disrupt daily life. As Bernard Thibault, leader of the powerful CGT union, declared, "*Non, ce n'est pas fini.*"

COMMENT

The events that have unfolded in recent weeks were sparked by the increase of the minimum retirement age from 60 to 62, still one of the lowest in Europe. But the original protest mutated into a much larger wave of discontent, with the support of more than 70 percent of the French public. How did we get from a necessary reform, which all agreed on in principle, to a massive wave of volatile and disruptive protest?

At the beginning, the opposition was a trade union affair. The proposed pension reform was, in the unionists' eyes, poorly thought out. Their demands seemed rather reasonable: all they asked of Sarkozy was that he condescend to negotiate and accept a few amendments. In essence, the unions asked for a

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Noted.

WIKILEAKS AND WAR CRIMES: With nearly 400,000 documents, **WikiLeaks'** most recent trove of military reports constitutes the largest intelligence leak in US history. The war logs reveal numerous instances in which the US military was aware of American involvement in torture, death squads and private contractor killings—contrary to what our military and civilian leaders said at the time.

Covering the 2006 bombing of a Shiite shrine in Samarra, **Ellen Knickmeyer**, the *Washington Post*'s Baghdad bureau chief at the time, reported that an estimated 1,300 Iraqis died in the aftermath of the attack as the nation spiraled into civil war. Then–Defense Secretary **Donald Rumsfeld** and Gen. **George Casey** dismissed Knickmeyer and other reporters, denouncing the possibility of imminent civil war and suggesting that no more than 350 people died. The WikiLeaks revelations confirm Knickmeyer's firsthand account. According to Knickmeyer, the documents show the US officials "must have known that all along, owing to the accounts from their forces. Despite the statements of the top US commanders at the time, it wasn't the journalists in Baghdad who were lying."

The question now is whether the WikiLeaks files will renew the push to hold Rumsfeld et al. accountable for misleading the public and for complicity with war crimes. As *The Nation*'s **Jeremy Scahill** argued on *Countdown With Keith Olbermann*, Bush administration officials "need to be held accountable by the Obama administration. And that is, I think, where Congress needs to really put pressure on this administration."

RYAN DEVEREAUX

COALFIELD JUSTICE? On October 15, the **EPA** announced its recommendation to veto a Clean Water Act permit for the **Spruce No. 1 Mine**, the largest mountaintop removal proposal in West Virginia. According to EPA regional administrator **Shawn Garvin**, the mining proposal by St. Louis–based **Arch Coal** would likely "contribute to the significant cumulative loss of aquatic resources and degradation of water quality" and bury about 6.6 miles of high-quality headwater streams.

Mountaintop removal supporters like West Virginia Governor **Joe Manchin** characterized the decision as an attack from the Obama administration. Only ten days earlier, in a widely dismissed stunt, Manchin had the state hire private lawyers to sue the EPA for attempting "to destroy the coal-mining industry and our way of life." But fifty members of Congress applauded EPA administrator **Lisa Jackson** for the proposed veto, and the Sierra Club's **Michael Brune** added that it shows the "Obama administration is adhering to science and the rule of law."

Coalfield residents are not celebrating just yet. The EPA has announced plans to meet with officials from Arch Coal, the **Army Corps of Engineers** and the state government to discuss "potential actions that can be taken to reduce impacts to the environment." Residents warned that this could lead to a compromise permit similar to the one the EPA granted in June for the nearby Pine Creek mountaintop removal operation. According to Coal River Mountain Watch president **Bob Kincaid**, "The only valid conclusion [the EPA] may legally, morally and ethically reach is that the Spruce Mine is an intolerable menace to Appalachia's future."

JEFF BIGGERS

DREAM DEFERRED: On October 21 the White House released **Jobs and Economic Security for America's Women**, a report that details women's position in the economy. According to the report, 47 percent of American workers are women, compared with 33 percent in 1960. Women are also increasingly economically vital to their families: almost four of every ten mothers are the primary breadwinners in their household. Despite such changes, the report finds that women are still greatly underrepresented in high-level management positions as well as in high-paying industries. While women on average have a higher educational attainment than men, they earn only 77 cents for every dollar men earn.

Although the report states that Hispanic women are a full 50 percent more likely to be unemployed than white women and highlights the importance of higher education, there is no mention of the **DREAM Act**, a bill that would allow immigrant students the chance to earn legal status if they attend college.

Marielena Hincapié, executive director of the **National Immigration Law Center**, sees this omission as a major oversight: "Young undocumented women are spearheading the activism around the DREAM Act and the broader movement to increase immigrants' access to education." She points out that these educational opportunities would open up legal employment to countless young undocumented women, advancing their position in the economy and surely aiding in President Obama's goal to "once again have the highest proportion of college graduates in the world."

KATE MURPHY

BAILOUT BLOWBACK: By any estimate, the **Troubled Asset Relief Program** is one of the most unpopular federal government actions in recent history, and Republican Congress members who approved the Bush-proposed bailout have paid a heavy price in this year's primaries. Utah Senator **Bob Bennett** lost his re-election bid largely thanks to Tea Party–backed **Mike Lee**'s vilification of Bennett's affirmative vote. But for all their howling, Lee and his ilk never seem to mention that TARP has largely been repaid—and may actually yield a profit. According to Bloomberg News, the financial portion of the program, which funneled $309 billion into **AIG** and banks, ultimately will earn the government at least $25.2 billion.

Nevertheless, Americans are mostly blaming Democrats for what they perceive as a failed policy. And in a cruel twist of irony, firms that received at least $1 billion in TARP money are donating heavily to Republican candidates, most of whom have made "bailout" a toxic slur. Despite likely saving the world's financial system from untold ruin, legislators who enacted TARP during those dire months in 2008 can't seem to catch a break.

MICHAEL TRACEY

GREAT JOB, BILL! **William Greider**, *The Nation*'s national affairs correspondent, has been awarded the **David Nyhan Prize** by Harvard's **Joan Shorenstein Center on the Press, Politics and Public Policy**. The prize, given annually to honor the late *Boston Globe* reporter and columnist David Nyhan, recognizes outstanding political journalism.

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fairer reform, one that would protect those who have strenuous jobs and should thus be allowed to retire earlier than others, as well as mothers who have to stop working to raise their children, and therefore often lack the number of trimesters needed to claim a full pension at retirement age. Nobody in France, except perhaps the Communist Party, wanted the reform to be scrapped entirely. But all insisted on social justice. Week after week, the unions mobilized a couple of million people in the streets, but Sarkozy dismissed their claims and refused negotiation. If there's one thing the French don't take lightly, it is a president who pretends not to hear their grievances.

As time went by, Sarkozy's intransigence started to irritate the broader French public. His attitude was the last straw. It was as if three years of controversial policies and actions—ranging from rejoining NATO, imposing an unnecessary debate on national identity and asking for a ban on the burqa to ordering expulsion of the Roma, cutting health and education budgets, and trying to put the profit motive at the heart of public services—suddenly came to a head, with a large majority of the public realizing they did not like what the president said and did in their name. A movement was born: youth were in the streets, oil refineries and depots were blockaded, gas stations ran out of fuel and rolling strikes in public transportation began to affect everyone. Millions more were marching in the cold autumn sun.

I was there with them, in the streets of Paris. There couldn't be a starker contrast between how events have been reported in France and in Britain and the United States. On the covers of Britain's broadsheets and tabloids like the *Independent* and the *Daily Mail* there were pictures of burning cars, fully geared riot police in action, hooded rioters; on the cover of the *International Herald Tribune*, it was stranded air passengers having to walk the roads. The tone was always somber. The *Daily Mail* even talked of insurrection on the level of the 1793–94 Reign of Terror.

In fact, the mood has been buoyant and the atmosphere in the streets electric and joyful, furious and determined. Beautiful young women raising their fists in defiance, as in Eugène Delacroix's painting *Liberty Guiding the People*, marched alongside their elders, whose banners displayed the street's wit and pugnacity. Quotations from nineteenth-century writer Benjamin Constant and from Aeschylus, on the need for a just and fair state as a guarantee of the people's well-being and happiness, were seen alongside less refined slogans like "Carla, we're like you, we're being screwed by the president." Still others, sprayed in red on the buildings of Paris, were reminiscent of the creative Situationist wordplays of '68: "*(G)rêve général(e)*"; "Let's strike till we retire"; "Why should we accept the unacceptable?"; "The inevitable is always avoidable."

Across the channel the British, reeling from the most severe cuts in the public sector since the days of Margaret Thatcher (or since World War II; analysts don't seem to agree), looked at their French neighbors with awe and bewilderment. On the BBC's flagship morning news program *Today*, Carolyn Quinn asked, "The Nobel Prize–winning economist Joseph Stiglitz thinks that we should take a leaf out of the French book. Should we? Could we? Or is it simply not in our DNA?" The answer—so far at least—is a little brutal: no, it is not in the British DNA to demonstrate. The British simply don't believe in it. In Britain, all political legitimacy lies with Parliament. If Parliament agrees on the government's spending cuts, the British will simply endure hardship valiantly, even if those cuts are unfair. In France, a country that in the past 200 years has known eleven different regimes while Britain's royal family peacefully perfected the art of croquet, legitimacy lies with the people and the street. Institutions and elected representatives are only an expression of the people's sovereignty and can be overruled by the street if the street decides to do so—courtesy of the French Revolution and Jean-Jacques Rousseau.

When austerity measures start hitting the public at large, in North America as well as in Europe, let's hope the French continue being French and prove to the world that the welfare state must be saved and that, indeed, as demonstrators chanted in the streets of France, "The inevitable is always avoidable."

AGNÈS CATHERINE POIRIER

Agnès Catherine Poirier is a French journalist and writer based in London. Her latest book in English is Touché: A French Woman's Take on the English.

Calvin Trillin, Deadline Poet

What Virginia Thomas Was Saying to Anita Hill

So just admit to perjury, Ms. Hill,
And you'll feel cleansed. You will have helped to rid
My Clarence of the shadow on his name.
For if you didn't lie, Ms. Hill, who did?

The Rosenberg Variations

A Chinese man walks into a bar. The man on the next stool introduces himself as Goldberg. They exchange small talk. Suddenly Goldberg punches the Chinese man in the nose. "Why did you do that?" asks the Chinese man. "That's for Pearl Harbor!" says Goldberg. "But I'm Chinese, not Japanese," says the Chinese man. "Chinese, Japanese… What's the difference?" says Goldberg. A few minutes later, the Chinese man punches Goldberg in the nose. "Why did you do that?" asks Goldberg. "That's for the *Titanic*!" says the Chinese man. "But I had nothing to do with the *Titanic*," says Goldberg. "Iceberg, Goldberg… What's the difference?" says the Chinese man.

COMMENT

I thought of that old joke when I first heard about Walter Schneir's book *Final Verdict: What Really Happened in the Rosenberg Case*, published posthumously with an introduction and afterword by his widow and collaborator, Miriam. Schneir

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was a lifetime student of the case, which for him ranked right up there with the Dreyfus case, Sacco and Vanzetti and the Scottsboro Boys as an example of historic injustice. In the Schneirs' 1965 book, *Invitation to an Inquest*, they had argued that the Rosenbergs were framed, "punished for a crime that never occurred." Thirty years later, after the National Security Agency released the Venona transcripts (declassified intercepts of Soviet intelligence cables during World War II), the Schneirs published an article in this magazine concluding that although the government's case against Julius had relied on fabricated evidence, "the Venona messages reveal that during World War II Julius ran a spy ring," albeit one that played only a relatively minor role in atomic espionage [see "Cryptic Answers," August 14/21, 1995].

With *Final Verdict*, Walter Schneir came to a new, "final" and startling conclusion: that it was really the Rosenbergs' in-laws, David (Ethel's brother) and Ruth Greenglass, not Ethel and Julius, who illegally passed classified information on the atomic bomb to the Russians via middleman Harry Gold.

Assuming Walter Schneir is right, pardon me if I ask, "The Rosenbergs, the Rosenbergs' in-laws… From the perspective of history, what's the difference?" After all, aside from the not unimportant matter of rectifying a monstrous injustice to the Rosenberg family, both were poor, first-generation Americans whose immigrant parents had come from Russia. Both had joined the Communist movement. Both were Jewish in a post-Holocaust moment when fears of anti-Semitism were matched by fears of being charged with anti-Semitism (it was no accident that the sentencing judge, Irving Kaufman, was Jewish; that the prosecutor, Irving Saypol, was Jewish; and that his assistant, Roy Cohn, was Jewish). Since Julius had recruited his brother-in-law as a spy, both were members of the alleged "conspiracy to commit espionage," and both had thus broken the US espionage law by spying for the Soviet Union. But like Klaus Fuchs, who had illegally passed secret atomic information to the Russians and was sentenced to fourteen years, neither deserved the death penalty.

On the cultural front, both couples exchanged jailhouse letters that revealed a Marxist mindset. Cold war intellectuals put down Ethel's death-house letters as party-line pamphleteering. Imagine the field day they might have had with the Greenglasses' letters, made available for the first time by Schneir. In one, for example, David wrote, "I love you with all the love of Marx and humanity of Lenin."

In *Final Verdict* Schneir's narrative is dramatic. He invites the reader to accompany him on his journey as he uncovers the various archival finds that inexorably led him to his conclusion. By comparing the Rosenberg trial record with documents now available under the Freedom of Information Act, or released through Venona or by the Russians and available in such books as *The Haunted Wood* by Allen Weinstein and Alexander Vassiliev (as well as Vassiliev's notebooks) and *Bombshell* by Joseph Albright and Marcia Kunstel, Schneir makes his main points about the case. Remember that the Rosenbergs were accused of passing on crude lens-mold sketches of the bomb drawn by Greenglass, who said he delivered the sketch to Julius in 1945 (with Ethel allegedly typing up notes of the meeting). But FOIA documents show that in their initial FBI interviews, all under oath, the Greenglasses never mentioned such a meeting with the Rosenbergs. And other documents show that the Russians didn't get the sketches until three months later. Schneir's conclusion, as Miriam says in her afterword: the meeting "was made up out of whole cloth." Hence his four key points: first, that Ethel never typed up any notes and was not a spy; second, that Julius did not receive lens-mold sketches from David Greenglass; third, that Ruth Greenglass, rather than Julius, cut the famous Jell-O box that was to serve as a recognition signal; and finally, that if anyone was guilty of stealing the atomic bomb secret, it was the Greenglasses, not the Rosenbergs.

The *New York Times*'s review of *Final Verdict* was written by Sam Roberts, David Greenglass's biographer (*The Brother: The Untold Story of the Rosenberg Case*). Roberts concluded that "it's hard to find any good guys in this entire affair." With all due respect to Roberts, a careful reporter, this is not a question of good guys and bad guys. Schneir's book makes a difference for the following reasons: first, the truth always matters, and if Schneir (whose thesis Roberts calls "not completely implausible") is right, history will have been served. Second, whether or not Schneir is right, we live in a state of opinion trusteeship. None of us have the time and few of us the ability to do our own research on all the complex, problematic issues of our day. On the Rosenberg case, the Schneirs have earned the public's trust—they scrupulously followed the facts wherever they led, revising their views when new evidence required it. The onus is now on those who disagree with Schneir to prove him wrong. And because he has used documents uncovered by those who (like Weinstein and Vassiliev) in the past have taken exception to his conclusions, Schneir's book is yet another argument for opening long-closed files on both sides of what used to be the Iron Curtain. Finally, the book reminds us that although the cold war is over, when it comes to transparency the Iron Curtain has come back down. The Russians have reclassified files they briefly opened, and, to quote the *Los Angeles Times*, "The Democratic administration of Barack Obama, who denounced his predecessor, George W. Bush, as the most secretive in history, is now denying more Freedom of Information Act requests than the Republicans did."

VICTOR NAVASKY

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Leslie Savan and Patricia J. Williams report back from Jon Stewart's **Rally to Restore Sanity**.

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Katha Pollitt

Postcards From Cape Town

In a minibus to the spiffy new Waterfront, I meet 18-year-old Hedda from Norway, who has taken a semester off to volunteer in a township daycare center. The center has seventy children ranging from 6 months to 5 years, she tells me, and only four teachers. How on earth do they manage? "Through violence," she says sadly. "They hit the children all the time." Although everyone I meet says early childhood development is key to improving South Africa's dismal school results, the center has no books, puzzles or educational toys. Are they glad to have you working with them? "Not really," she says. "I think I just get in the way." Hedda seems amazingly resilient and mature and good-hearted, but I can't help wondering how much good she can possibly be doing. Wouldn't it make more sense for NGOs to skill up the daycare staff so they don't have to keep order with blows, and (especially considering South Africa's staggering rates of unemployment) fund the hiring of local helpers instead of importing one from Norway?

It hasn't rained in months, but a sudden downpour sends us scurrying into St. George's Cathedral just as a ceremony commemorating the fortieth anniversary of the demolition of St. John the Evangelist church on Waterkant Street is about to begin. St. John's was the heart of the colored community of District One, where the upscale Waterfront development is now. When in the 1960s the apartheid government forced the removal of the residents to the outskirts of town, the congregation kept coming back by train to worship. Now, some 150 to 200 mostly middle-aged to elderly people are gathered in their Sunday best to recall how church authorities sold the church out from under them as part of a complex real estate deal. "It was divide and rule," Terry Lester, subdean of the cathedral, tells me. "Today the most gentrified streets are called the Cape Quarter—but how can you have a Cape Quarter without brown people?"

Dr. Terence Fredericks, a white-bearded former resident, gives a rousing speech accusing the Anglican Church of collaborating with apartheid: "The church said it needed money to build churches in the townships"—perhaps not coincidentally, this would also keep people of color out of their old neighborhood. Several speeches later, the archbishop, Thabo Makgoba, a tall, handsome black man, takes the podium and apologizes graciously on behalf of those now-deceased apartheid-era white clerics. In South Africa, as in America, there's an awful lot of belated apologizing.

In a week of intense conversation—the great thing about South Africa, my husband likes to say, is that no one engages in small talk—I heard the full spectrum of views about the new dispensation. At one extreme there's the gloom of journalist Bill Johnson, who sees the country sinking into incompetence, corruption and kleptocracy under ANC leadership, with whites, because of affirmative action and staggering rates of violent crime, leaving in droves, taking their skills with them. At the other is the hopefulness of economist Francis Wilson, who argues that young whites, no longer able to waltz into government jobs as they did under apartheid, are turning to entrepreneurship and good works, in his view a much better use of their skills. What struck me most, though, was the bizarre nature of the still intensely racialized society. There may be black millionaires now, but most blacks are still desperately poor—uneducated, unskilled, unemployed. Whole extended families survive on one old lady's tiny pension (1,000 rand, or around $140 a month) or one street seller's meager earnings. Every security guard, every maid, is supporting a small crowd of relatives their white employers never see.

Our friend Barbara drives us an hour or so out to Franschhoek, the wine-growing region originally settled by Huguenots. It's almost too beautiful—Santa Barbara crossed with Provence, only more pristine, with big pastel houses surrounded by pink rosebushes and set in immense vineyards. To tell the truth, it looks a bit like a stage set. We stop at Solms-Delta, a farm and vineyard that the brilliant and astonishingly energetic Mark Solms (besides being a farmer and vintner he's a world-class neuroscientist, a psychoanalyst and an amateur ethnomusicologist) has turned into a workers' co-op, with a panoply of benefits and much-needed social services (alcoholism among vineyard workers is extremely high, the legacy of the old custom of paying them in wine). After a visit to the farm's fascinating slavery museum (did you know that Cape slaves were mostly Asian?) Barbara takes us to the township to visit her Zimbabwean friends Tonderai and Rebecca, who is due to give birth any day. This young couple, economic refugees from Mugabe's collapsing regime, have a lot to despair about—they live in a tiny, flimsy shack in a squalid slum full of people who only recently were on the verge of murdering any Zimbabweans they could get their hands on and who still, says Tonderai, "have violence in their hearts." Imagine bringing a baby into this situation! And yet they cheerfully welcome us inside to visit with them.

Black South Africans deeply resent as job stealers the hundreds of thousands of refugees who have flooded into the country from elsewhere in Africa. While plenty of Zimbabweans are without work and destitute, eking out a living selling beaded trinkets to drivers stopped at red lights, both Tonderai and Rebecca have indeed found work—he's a cook; she does her neighbors' hair. From their perspective, Zimbabweans get jobs because they are better educated, more enterprising and speak better English. In fact, despite their discouraging circumstances, the two of them seem full of vitality and hope. They may not have a kitchen or a bathroom, but they have a computer, with Internet. And just before we leave for the United States, Barbara calls to tell us Rebecca has given birth. Mother and tiny son are doing well. ■

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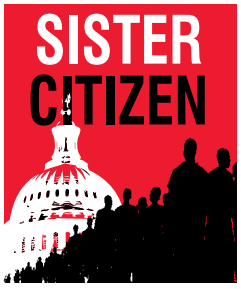
Melissa Harris-Perry

To Whom Apologies Are Really Due

I had a visceral reaction to the news that Virginia Thomas had called Anita Hill and asked *her* for an apology. In 1991 I was a college freshman, and the televised Hill-Thomas hearings were my adult initiation into the public vilification of black women. I watched as white male senators and conservative commentators exploited the common myth of black women as promiscuous to cast Hill as oversexed and delusional. I remember when Thomas draped himself in the history of America's racial violence by angrily referring to his confirmation process as a "high-tech lynching." Although there is no history of white men forming a posse to punish those who sexually assault black women, Thomas deployed the lynching trope to great effect. After the comment, his approval ratings rose sharply among black Americans, many of whom maligned Hill as a race traitor who allowed her story to be used by powerful white opponents to harm the credibility of an African-American man. The Hill-Thomas hearings were an object lesson in the joint complicity of black communities and white power structures in the public humiliation of black women to meet conservative ends: being both black and a woman means you can be maligned by both racist and sexist discourse.



So my stomach flipped when I learned of Virginia Thomas's phone call. Her request is the aggressive act of a right-wing activist unwilling to allow her opponent the dignity of privacy. And it is much more. Ginni Thomas's insistence that Hill apologize is an apt metaphor for the long history of blaming black women for social ills. After the Civil War black women were considered a potential public menace. Social reformers claimed that black women's sexual immorality was the cause of urban disruptions during the 1920s Great Migration. In the 1960s liberal policy-makers worried that black women were matriarchs who undermined family stability. And in the 1980s Ronald Reagan painted black women as welfare queens robbing the public coffers. In our current economic downturn, the explicit and implicit public denigration of African-American women is in vogue across the political spectrum and is supported from within black communities as much as it is imposed from the outside. Once again, black women find themselves blamed as one of the central causes of, rather than one of the primary victims of, American social and economic decline, and many are calling on black women to apologize for their own suffering.

In her new book *Democracy Remixed*, political scientist Cathy Cohen argues that race leaders, media voices and policy-makers eschew analysis of the structural inequalities—inadequate housing, poor nutrition, unequal schools, limited employment opportunities and racially biased policing—that cause racial inequality. Instead, they blame the sexual practices of young black women. Primed by the centuries-old assumption that black women are sexually lewd, this moral panic suggests that inequality should be addressed not by structural change but by enforcing limitations on black women's sexuality.

This impulse shows up in some surprising places. For example, it's a common theme among Democratic and Republican education reformers, who agree that children are suffering primarily because they are raised in single-parent households headed by poor women in urban areas. "Poor" and "urban" are code words for "black," and many reformers imply that black women are not spending enough hours reading to their kids; not paying enough attention to keep their kids out of trouble after school; and, most important, not providing them with financially stable fathers.

Even President Obama has argued that America's imperial hegemony is threatened by inadequate educational achievement. Beneath that anxiety is the implication that this shortcoming can be traced to failing black mothers and to their public employee counterparts—urban public school teachers, who are disproportionately women. Never mind the high cost of quality daycare, the lack of affordable housing, the challenge of balancing work and parenting, the poor prenatal care and childhood health and dental coverage—black women should be able to raise honor students through sheer force of will!

Not only that; they should apologize for having children at all. In lockstep with the implication that black women's parenting is undermining education, some African-American commentators have aggressively targeted black women with a new No Wedding, No Womb movement. Led by blogger Christelyn Karazin, people in this movement suggest that childbirth outside marriage is a primary cause of the social ills that afflict black communities. In their view, women should marry "strong" men who can provide financial security for themselves and their children. Through its title alone, No Wedding, No Womb explicitly encourages black women to barter their reproductive capacity in exchange for the trappings of patriarchy: a wedding for a womb. The movement shames black women who choose to exercise their reproductive freedom by bearing children they want even when the men in their lives and leaders in their communities disapprove. These women are made to feel they should apologize for choosing to be parents.

Even in this moment when black women are asked to apologize for themselves, for their choices and for their children, there are models of unapologetic black women who insist on the right to their own voices. When Shirley Sherrod took a strong public stance against blogger Andrew Breitbart, the Obama administration and the NAACP, who all attempted to malign her character—she offered a potentially empowering model for African-American women. Rather than apologize, she demanded an apology. Anita Hill's decision to make the Thomas voicemail public is a similarly unapologetic stance of self-preservation. ■

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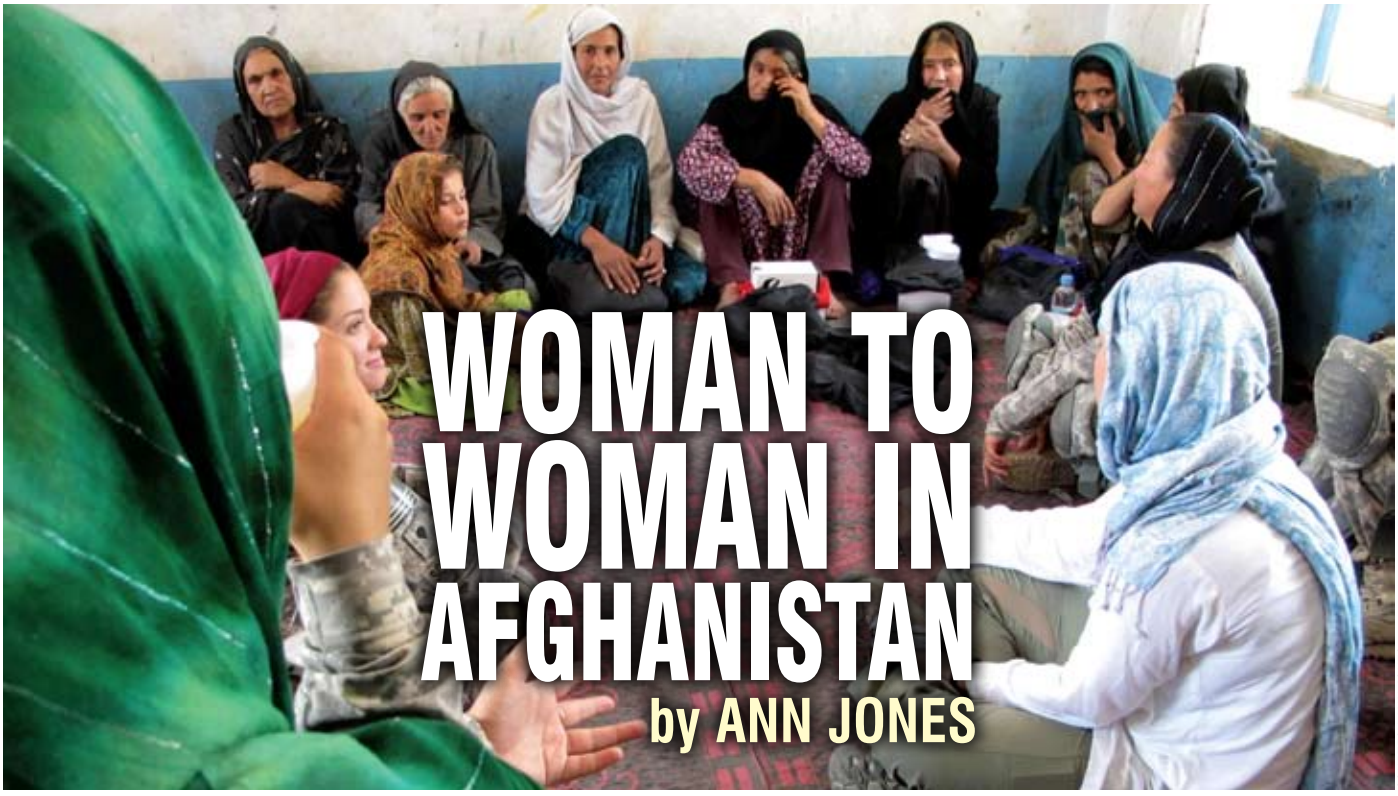

WOMAN TO WOMAN IN AFGHANISTAN

by ANN JONES

COURTESY ANN JONES

The cornerstone of any COIN effort is establishing security for the civilian populace. —Gen. David Petraeus

The American military had been engaged in Afghanistan for almost eight years before anyone seemed to notice the effects of the occupation on nearly half the adult population, which happens to be female. George W. Bush had famously announced the "liberation" of Afghan women from the Taliban and let it go at that. Secretary of State Hillary Clinton points to women's progress on paper and in public life in the Afghan capital as reason to continue the war, lest those gains be lost. But among most Afghans, especially the nearly 80 percent who live in rural areas, the effect of the American military presence has been to replicate for women the confinement they suffered under the Taliban. Given cultural rules against mixing the sexes, Afghan men lock up their women to protect them from foreigners; and the American military, an old boys' club itself, feels comfortable enough with that tradition to honor it.

But after Gen. David Petraeus resurrected the edicts of counterinsurgency (COIN) warfare from the ash heap of Vietnam and inscribed them in the 2006 *US Army/Marine Corps Counterinsurgency Field Manual*, they appeared in Afghanistan as holy writ, reinforcing famous "lessons learned" from Iraq and exalted to the level of "strategy." COIN tactics (for that's all they are) call first for protecting the "civilian populace" and then "rebuilding infrastructure and basic services" and "establishing local governance and the rule of law." American commanders, saddled with nation-building, doled out millions of dollars in discretionary funds intended for short-term humanitarian projects to build roads (which unescorted women can't use) and mosques (for men only) before anyone suggested that women perhaps should be consulted.

In February 2009 Marine Capt. Matt Pottinger set out to do something about that. He helped organize and train a team of women Marines to meet with Afghan women, just as male soldiers had been meeting with Afghan men for years to drink tea and discuss those ill-conceived "infrastructure" projects. A handful of female Marines and a civilian linguist, led by Second Lt. Johanna Shaffer, formed that first Female Engagement Team (FET). Its mission was a "cordon and search" operation in Farah province that included "engaging with" Pashtun women and giving them some "humanitarian supplies"—known in COIN jargon as PSPs, or Population Support Packages, which might contain anything from a crank radio to a teddy bear—to earn their "goodwill." That's the point of protecting the populace—to win them over to our side so the forsaken insurgents will shrivel up and die. These tactics failed miserably in Vietnam, and they appear to be failing in Afghanistan, but with counterinsurgency as our avowed "strategy," Pottinger's idea of engaging the hidden half of the populace was way, way overdue.

In a report issued earlier this year, Pottinger and two civilian colleagues, Hali Jilani (a Pashtun-American cultural adviser to the Marines) and Claire Russo (a former Marine intelligence officer currently advising the Army), noted rather vaguely that "more FETS have stood up," including "several [Marine] teams on an intermittent basis in southern Afghanistan" and some FETs run by "U.S. soldiers and airmen in the country's east." In a separate report issued in January, Russo noted that six FETs had been active in eastern provinces.

The imprecision of these reports reflects the haphazard origins of the FETs and the resistance of the military to the whole idea. Until March, when the Marines trained forty women at

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Camp Pendleton, California, to deploy to Helmand province in April as the first full-time Female Engagement Teams, no women had been trained for the job before deployment and none were assigned exclusively, or even primarily, to FETs. Instead, with grudging support from a few commanders, Pottinger—and later Russo—cobbled together FETs composed of those few women already on hand, all of them already assigned to other full-time military jobs. Without the doggedness of Pottinger and Russo, and the willingness of brave women soldiers to volunteer for a second job, FETs probably wouldn't exist. That they're far from perfect should be no surprise.

The military officially maintains the fiction that women are excluded from combat, so Army FET organizers have to recruit volunteers among the women in "soft" skill jobs on base—women soldiers the Army hasn't trained in the "hard" skills of combat soldiering. (They have the right to refuse to join the FET, but in the Army it's hard to say no when you've been "voluntold.") The FETs are then attached to male infantry units for missions that take them outside the wire. The Marine FETs who volunteered for training at Camp Pendleton are similarly attached to male "maneuver units." Deployed to Helmand province, scene of the first major offensive of Obama's war, some Marine FETs have been engaged in firefights. Yet it's one of the ironies of FETs that women soldiers, insufficiently trained to defend themselves, must still be escorted by men, just like Afghan women.

So the first task of FET trainers is to bring women up to speed, or closer to it. When I joined a brand-new Army FET organized by Russo at a forward operating base in Kunar province this past summer, I met the team on the firing range, practicing "reflexive fire" with short-barreled M-4s under the tutelage of an experienced infantry sergeant and some of his men who had offered to help—"so they could hang around the women," the sergeant said. A gaggle of Afghan soldiers from an adjacent Afghan National Army base stood gaping until another American sergeant shooed them away, saying, "I don't stare at your women. Don't you stare at mine." The women soldiers, methodically gunning down targets, were a curiosity on their home base.

With fewer than a dozen women on the base, some of them in essential jobs, half a dozen had been handpicked for training—among them a radio specialist, a supply clerk, a fueler and two medics. They put in a full day's work—the fueler started at 4 AM—then turned up for class in the evening to see a PowerPoint presentation on Afghan history, learn Pashto greetings from the young Afghan-American female interpreter (or "terp") assigned to the team, or study patrol formations with the infantry sergeant and then go outside to drill in the dark. One evening they practiced getting in and out of armored personnel carriers—MRAPs and M-ATVs—while the base was taking fire and firing back. Russo urged them to put in a couple of hours every day at the gym, as she did, to prepare for trekking to villages in blistering heat bearing loads of fifty to sixty pounds, not counting those PSPs—but there weren't enough hours in the day.

Most of the women were young (21 to 27), and none of them matched the stereotype I heard from some blustering for-profit contractors on the base (none of whom had served in the military themselves), who saw the Army as a rehab center that rescues drug addicts, alcoholics, criminals and prostitutes from themselves and teaches them "discipline." The FET women had mostly been "rescued" from college education they had tried to pay for by working low-wage, dead-end jobs. They already knew a lot about discipline. Some had children at home, cared for by husbands or parents. Some had been deployed before to Iraq. None had bargained for jobs that would take them outside the wire, least of all in a "battlespace" on the Pakistan border then considered very "hot." They were excited and nervous. A few days before I arrived, five infantrymen had been killed. Three more were killed while I was there. The sergeant continued his drills.

Most of the FET's prepackaged PowerPoint lessons clearly had been designed by men. A list of recommended readings included all the old macho accounts of mujahedeen "freedom fighters" but not a single one of many excellent books about Afghan women. One lesson, originally designed by men to teach men how to talk to men, taught FET women to pose "four key questions" to the Afghan women they "engage"—like, "Have there been changes in the village population in the last year?" That's a question few women would be prepared to answer, living as most do within the confines of their family compound or immediate neighborhood. It has been a dubious assumption of the FETs that Pashtun women not only wield great power at home but also know all that transpires for miles around.

Such questions also suggest a significant mission creep: from winning hearts and minds to gathering intelligence. The newly trained Marine FETs are designated as Civil Affairs units, assigned to deliver humanitarian aid, help out at health clinics and so on; and despite the official claim that they don't collect intelligence, they sometimes say they do. Russo argues that they should. "If you are going to send soldiers outside the wire, you have to give them a clear mission of real value that contributes to our overall mission here," she says. Hearts and minds aren't enough. Her team members wanted both to "help" Afghan women and gather information that might save American lives.

Nevertheless, on this new FET's first mission to speak with a gathering of women at a school in a nearby village—a meeting arranged, as all are, by local male officials—an opportunity to learn something about the enemy was lost. When the village women said they feared Taliban reprisals after our visit—raising the topic of the Taliban themselves—the team leader changed the subject. Later she explained that the purpose of the first visit is to "build trust"; "interviewing" is scheduled for subsequent meetings. The lost opportunity to learn something about the local Taliban while assuaging the women's fear was a reminder that flexibility is not taught by PowerPoint, nor, as Andrew Bacevich has noted, can "cultural sensitivity" be assumed to be a skill "like marksmanship…in which soldiers can be trained."

After debriefing back at the base, the official FET mission report described the area visited as "safe," although the women who live there had tried to tell us that it is not safe for them.

Ann Jones is the author of Kabul in Winter *and the just-published* War Is Not Over When It's Over *(both Metropolitan), about the impact of war on women.*

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(A lot is lost in translation. Many interpreters dislike the Army, having been asked to say and do things insulting to their Islamic beliefs; and many say that no matter what they translate, the Army will give it a positive spin, as indeed the Army did when this contentious encounter was officially reported as a success.)

In fairness, it must be said that this FET had trained for less than two weeks, mostly on the "hard" skills they needed to accompany the infantrymen with confidence, and none of them had seen an Afghan woman before. The team had been taught to "clear" a room at gunpoint but not to avoid treading on the floor mats or pointing the soles of their feet at their hosts. (A Marine FET pictured in a recent *New York Times* video made the same blunders, although one Marine said they had been taught "everything." The women of both FETs kept their boots on, in violation of Afghan hospitality.) To show their respect for Afghan women, and identify themselves to onlookers as women, the Army FET had been taught to wear head scarves—in the style in which they are worn in Iraq. To "build relationships" they asked innocent questions such as "What foods do you like to cook?" (Answer: "What we have.")

Russo had already laid out the next training topics: planning and rehearsing mission meetings. Each FET member was to bone up on a critical area: local politics, tribal structure, current US projects in the area and aid available to women. Afghan manners were not on the agenda.

Yet Pottinger, Jilani and Russo, who wrote the report on FETs, are aware of the damage done by mistakes. Russo maintains that "simple engagement without proper task, purpose and operational integration is not sufficient and can actually be harmful." They cite the "negative consequences" of past blunders; one team so shamed Afghan women by searching them at the entry to a health center in full view of men that when the FET returned for another visit, women patients shied away from the center and doctors asked the FET to leave. Another team, having learned that village women walked more than an hour each day to get water, had a well built in the village. The village women had the well destroyed; that daily walk for water was their only chance to escape the house and be together. Pottinger, Jilani and Russo conclude that "having poorly trained or badly employed FETs" is not better than having none.

They also argue that FETs should not make single visits, noting that teams that pass through villages "just once" tend to "generate more friction than rapport"; but Russo's research revealed that FETs paid return visits "less than 50 percent of the time." In many cases, the FET women were tied up in their primary jobs and no commander saw fit to free them. Worse, as Russo notes, "oftentimes, the FETs are asking about problems that they have no capability to address"; they don't return because, unlike the commanders with near limitless discretionary development funds, the FETs have no resources at all. Russo calls this situation "counterproductive," noting that the failure to address women's problems "may reduce support for the Coalition."

Indeed, the village women the new FET visited were furious that a previous FET had promised them seeds for their gardens but never returned to deliver. They spent most of the meeting castigating us with a rage rarely seen in Afghan women. Yet similar stories were legion. In some instances, an infantry squad had brought a FET along on a mission because the troops had noticed that Afghan men would rather talk to American women than to them. The purpose of the FET got lost altogether when male planners could use American women to mediate between American and Afghan male egos—a tactic as old as Eden.

Pottinger, Jilani and Russo don't blame the women for these failures. They blame the good old boys of the US military. You can hear their exasperation in the words they choose to describe "four factors" that stand in the way of "successful female engagement." First, "die-hard presumptions by battlefield commanders" that talking to women will "pay no dividends." "Hackneyed hypotheses" that Pashtun men will object (they don't). "Failure to involve FETs" in planning, "leading to poorly conceived missions." And finally, "unwillingness to establish full-time FETs" with "resources and time to train as professionals should." They sum up the military attitude in the title of their report: "Half-Hearted: Trying to Win Afghanistan Without Afghan Women."

Typically, commanders sell short both Afghan and American women, so when a FET does jar loose some intelligence, it's likely to be lost.

Typically, commanders sell short both Afghan and American women. They may use FETs when they feel the need—to search women, for example, as women soldiers were recruited to do in Iraq in the so-called Lioness program. But they see no value in women talking to women; they don't care about the female half of the Afghan populace, COIN tactics notwithstanding, and they want the women under their command to stick to their assigned jobs. As a result, when a FET does jar loose some valuable intelligence, it's likely to be lost.

Take the case of a woman I'll call Manizha, from the "hot" province of Nangarhar. After an Army FET held several women's meetings in the area last year, offering to help women, 25-year-old Manizha walked to the Army base with three young children in tow. She told her story to Ken Silvia, a retired NYPD detective working as a civilian law enforcement consultant to the Army. Her husband had died, and his brother had taken her as his second wife. The man abused her; she wanted the Army to help her escape with her children, and in return she promised valuable information. Her abusive husband was a Talib, then in possession of two suicide vests; Taliban often stayed in his compound and she had to prepare their meals. Manizha described Taliban movements in the area during the past two years—all verified by the Afghan Army intelligence officer attached to the base—and she had more information to offer about current and future plans. But according to Silvia, base commander Lt. Col. Randy George dismissed the idea of assisting her in exchange for her intelligence, saying, "We can't help everyone." (Reached by phone, George, who has since been promoted to Colonel, said he had no recollection of the incident.) Silvia, an outspo-

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ken critic of the "shocking" incompetence of Army intelligence gatherers, said the commander "couldn't see an Afghan woman as a person with valuable information to trade."

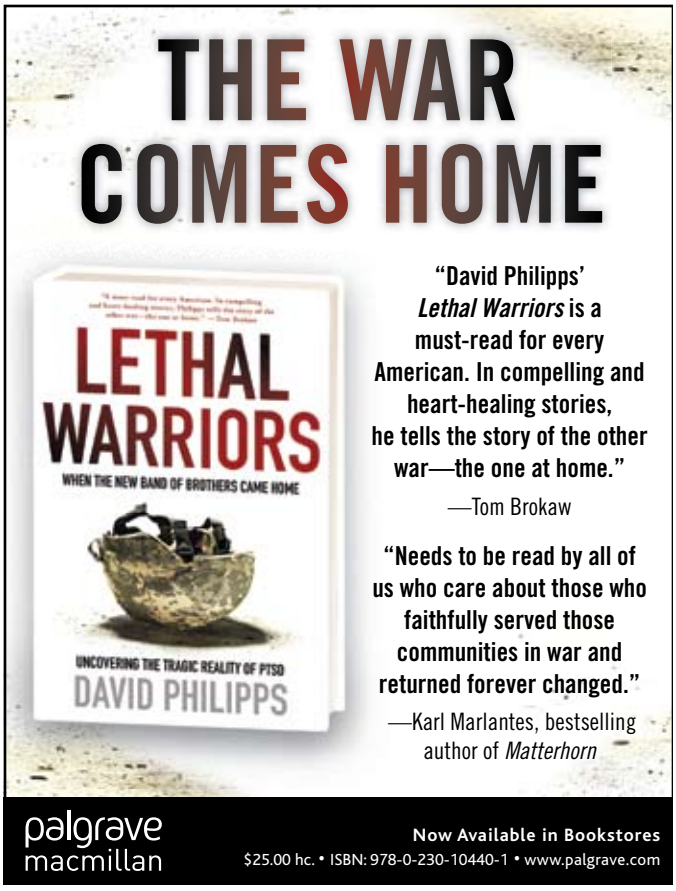
Silvia, on the other hand, says he sees Afghan women as "a grossly unexploited source of information" and FETs as "a great asset." But not anymore in Nangarhar, where word of what happened to Manizha, who trusted the American women, must have gotten around. Refusing to keep her safely at the base, the Army sent her under armed guard to a women's shelter in Jalalabad, or so Silvia was told. But there is no women's shelter in Jalalabad. Somehow she wound up in the hands of the police, who kept her in jail for several months, threatening to charge her with *zina* (adultery) or turn her over to her husband, and reportedly eliciting a lot of valuable information before an international anti-trafficking organization intervened and took her away. Two of her five children were left behind. After that, it's hard to imagine any woman in Nangarhar turning up to meet American women again or offering information to the Army.

In fact, Pottinger, Jilani and Russo note that in 2009 "so few U.S. servicewomen had meaningful contact with Afghan women that, statistically speaking, they literally had a higher chance of getting pregnant than of meeting an Afghan woman outside the wire." They ask, "Who is shielding their women from Afghan society more: Pashtun men or U.S. commanders?" And why? Is the separation of Afghan and American women deliberate, as the question implies, or merely a consequence of what Silvia calls the military's habitual "lackluster response" to women?

For all their tensions and shortcomings, woman-to-woman FET meetings can change minds, American as well as Afghan. After our village meeting, the young FET women were shocked. One said, "I thought we'd meet women more our age, not these really old ones." I had to tell her that most of the Afghan women she had met were about her age, or only a few years older. I saw her distress. Then she said, "I'm going back. I can get my mom to send me some seeds, and I'll take them back myself." Another said, "Oh, my God, we have so much at home. If Americans could come here and see how people live, they'd feel as I do. I just feel—it's hard to complain about anything."

The American and Afghan women had things in common, but these seemed harder for the Americans to see. Just as Afghan women routinely endure physical abuse, several women on other FETs told me that physical abuse at home had driven them into the military, unaware as they were of the huge incidence of abuse and rape within the armed forces. As a Marine lieutenant, Claire Russo was raped by a fellow officer and so brutally sodomized that the physical damage is beyond repair. The Marine Corps, knowing this was not the man's first offense, declined to take action against him. Russo took the case to a criminal prosecutor, and her assailant, Capt. Douglas Dowson, was sentenced to three years in a California prison. After that, in July 2006 at a special ceremony at Camp Pendleton, Russo received an award from the San Diego County district attorney as a "citizen of courage" plus accolades from public officials all the way up to Governor Arnold Schwarzenegger, who hailed her "resilience and resolve in the face of crime." Her three-star commander said that in pursuing her case despite potential backlash, she "exemplified" the Marine Corps values of "honor, courage, and commitment." To explain her dedication now, as a civilian adviser, to creating new FETs for the Army, Russo says, "The Marines leave no 'man' behind—unless you're a girl. I was through with the corps, but I wasn't through serving." She serves today as a muscular, formidably fit civilian with a very large handgun always tucked in her belt.

In November 2009 the commanding general of the International Security Assistance Force Joint Command signed an order calling on military units to "create female teams to build relations with Afghan women." Pottinger, Jilani and Russo write, "This order…reflects the considered judgment of command that FETs are an important part of our evolving counterinsurgency strategy." That's a legitimate argument for creating FETs of full-time, fully trained, professional female engagement soldiers to execute the clear-cut mission of bringing security to "the populace." That is, if you subscribe to the American occupation of Afghanistan at all—as I do not—and to the magic of counterinsurgency, which lately has been losing out as the tactic du jour to the more macho "kill or capture." But the commanders who blather about counterinsurgency yet fail almost entirely, and contrary to direct orders, to engage half the populace give the game away. To most of the military establishment, the FETs are not "an important part" of US strategy at all. Far from it. But American women meeting Afghan women may be the start of something more important than that. ■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Killing Reconciliation

How brutal raids are sabotaging the political strategy the US claims to support in Afghanistan.

by JEREMY SCAHILL

On March 26, 2009, Mullah Sahib Jan, a militant Taliban imam from the Mohammed Agha district in Afghanistan's Logar province, walked into the office of the Independent National Reconciliation Commission, the main body encouraging the Taliban to lay down their weapons and work with the government. He was escorting fifty Taliban fighters who, he said, had committed to ending their fight against the Afghan government and entering the process of integration. To the government, Sahib Jan was a shining example of how reconciliation with the Taliban is supposed to work. But less than a year later, the former militant's story would stand as a devastating symbol of how the actions of US Special Operations Forces are sabotaging the very strategy for reaching a political settlement that US officials claim to support.

KAREN CALDICOTT

Throughout Afghanistan, large billboards line the major roads encouraging Taliban fighters to do what Sahib Jan did—reconcile with the government. The billboards show red silhouettes of Kalashnikov-carrying Taliban fighters walking across a line, after which they transform into civilians and join white silhouettes of unarmed Afghans dressed in traditional garb. The message is clear: lay down your weapons and rejoin the family.

When Sahib Jan walked into the reconciliation office, he publicly announced that he and his Taliban colleagues had agreed to work with the government on a peace process after the commission assured him that it would restrict US-led NATO forces from conducting night raids and killing civilians. "If the killing and arrests of people were not stopped," he said, "we would withdraw our support to the government and the foreign forces."

Reconciliation officials in Logar province say that making allies out of figures like Sahib Jan is the centerpiece of their work. Logar and its neighboring provinces, Paktia, Wardak and Ghazni, contain a strong presence of not only the Taliban but also the Haqqani network, the insurgent group portrayed by US officials as having the closest ties to Al Qaeda and a cozy relationship with Pakistan's ISI spy organization. Logar is also home to several tribes that say they have spent the past two years trying to make peace. A crucial part of this, they say, is building enough trust with the Taliban to make a serious case for ending their insurgency. Soon after his initial trip to the reconciliation office, Sahib Jan left his calling as an imam and took a position as a religious adviser to the reconciliation commission. As part of his work, reconciliation officials say, he traveled to hardcore Taliban areas.

"He was preaching to the Taliban, encouraging them to come to the government, telling the fighters there were a lot of benefits to laying down their arms," says Mohammed Anwar, director of Logar's reconciliation commission and an adviser to a local tribal council. Council officials credit Sahib Jan with putting Taliban fighters on the road to reconciliation.

But on the morning of January 14, Sahib Jan's bullet-riddled body lay on the ground outside his family's mud-brick compound in Logar's Safed Sang village. According to local officials and his family, he was killed in a night raid by US Special Operations Forces. "At 1 or 1:30 in the morning, US soldiers pulled up to the gas station in front of our house. We were sleeping in our rooms at that time," recalls Sahib Jan's 18-year-old son, Haider. "They broke down the doors of our house. My father was in one room, and we were in another. We don't know exactly when the US soldiers entered our house, we just know that they took our father and killed him. They killed our father outside our house, a short ways away. We don't know if they killed him from a helicopter or if commandos killed him."

According to Haider, US forces entered the compound with ladders and corralled the men into one room, where they handcuffed and blindfolded them. They moved the women to a separate room. "They tied all of our hands and roughed us up a little bit. They were beating us with both weapons and their hands," recalls Haider. "I was tied up from 1 or 1:30 in the morning until 6 in the morning." The family says that during the raid much of their property was damaged or destroyed. As Sahib Jan's sons were tied up, they had no idea of their father's fate until the Afghan translator appeared with US soldiers. They showed them a picture and said, "This is the man we killed."

"It was my father," Haider recalls. The soldiers then escorted the surviving men of the family to their father's body, where they saw about six bullets in it. With that, the Americans left; they have never contacted the family since.

"We have checked our logs and with our units that conduct these types of mission profiles. There is no record of the operation," US Lt. Commander Thomas Porter wrote in an e-mail to *The Nation*. But an eyewitness to the raid named Azmuddin, who works at the gas station in front of Sahib Jan's home, says, "US forces told me the next morning that they killed him because he had shot at them." Azmuddin says the morning after the raid he was arrested by US forces and taken to the classified Tor Prison, or "black jail," for fifteen days before being locked up at the Bagram prison for four months. In response to NATO's statement, government officials in Logar reacted angrily and swore that Sahib Jan was killed by US forces.

"There was a false report claiming that Sahib Jan was a

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Taliban, and the Americans conducted a night raid and killed him even though he had been working with us for months," says Anwar, the head of Logar's reconciliation commission. "During the entire time he worked with us, he hadn't participated in any attacks against the government. He worked with us as a religious adviser. Only the US soldiers know why they killed Sahib Jan. We don't know why." The local district chief, Abdul Hameed, says US forces carried out the raid without the cooperation of provincial security personnel. Anwar says that when he tries to contact US forces about these deadly incidents, they won't let him on their base, and the guards always tell him the appropriate officials are too busy or not there.

Officials at the reconciliation office point to several night raids over the past year, which they say targeted former Taliban who entered the process of reconciliation, as devastating to their work. "We are trying to build bridges between the Taliban and the government and trying to find jobs for them. We are working to get them decent housing in return for leaving the Taliban," says Anwar. "We are also trying to ensure that once they turn themselves in, they are not arrested again. How can we encourage reconciliation in good faith in the face of these American raids against the very people who agree to disarm?"

Two senior officials of the former Taliban government say reports that the Taliban are engaged in serious negotiations are false.

Meanwhile, US and NATO officials proclaim that the Taliban are on the ropes and will eventually be forced to make a deal. "The insurgency is under pressure, under pressure like never before in Afghanistan," NATO Secretary-General Anders Fogh Rasmussen said on October 22. "Our aim for this year was to regain the momentum. Now we have it." In recent weeks, such rhetoric has been bolstered by a flurry of reports about senior Taliban officials engaging in direct talks with the Karzai government, and US officials portray Washington as open to some form of a political settlement. But there is an enormous disconnect between the image projected by the US and Afghan governments and reality. On the ground the Taliban seem to be gaining traction and increasing membership despite, or perhaps because of, intensified US targeted-killing operations and night raids.

Two senior officials of the former Taliban government have told *The Nation* that the Taliban will not engage in any meaningful talks until foreign troops are expelled from Afghanistan and that reports that the Taliban are engaged in serious negotiations are false. "There is nothing going on, no negotiations between the Taliban and the Americans or the Taliban and the [Afghan] government," says Abdul Salam Zaeef, who served as the Taliban government's ambassador to Pakistan, in an interview at his home in Kabul. He says if anyone claiming to be Taliban is negotiating, they are essentially nobodies to the movement. "There was no 'peace meeting' because the Taliban reject it."

Privately, US officials have acknowledged that reports in US media outlets of senior Taliban negotiating are propaganda aimed at sowing dissent among the Taliban leadership. "This is a psychological operation, plain and simple," a US official with firsthand knowledge of the Afghan government's strategies told the McClatchy news service. "Exaggerating the significance of it is an effort to sow distrust within the insurgency."

The story of Sahib Jan raises a complicated question: was he really an influential Taliban figure? A current Taliban commander from Kunduz told *The Nation* that there is no evidence of the reconciliation program's success and that rural people are sometimes used as pawns in a game to elevate the status of tribal leaders with the Afghan government by "reconciling" Taliban fighters. "These are people who are just getting salaries from foreign powers or Afghan officials. You and I just invent a group and give them turbans and weapons and they go and say, We are Talibs and we surrender," says the Taliban commander, who goes by the nom de guerre Salahuddin. It is not clear whether Sahib Jan was an example of this, but in terms of public perception in Logar, that is irrelevant. What is not in dispute is that he publicly announced he was a Taliban mullah on the path to reconciliation and was killed in a night raid ten months later.

The US strategy seems to be to force the Taliban to the table through a fierce killing campaign. According to the US military, over a ninety-day period this past summer, US and coalition Special Operations Forces killed or captured more than 2,900 "insurgents," with an estimated dozen killed a day. Between July 4, when Gen. David Petraeus assumed command in Kabul, and early October, according to the military, US and Afghan Special Operations Forces killed more than 300 Taliban commanders and more than 900 foot soldiers in 1,500 raids. "This is precisely the kind of pressure we believe will lead to reconciliation and reintegration" of the Taliban, Defense Secretary Robert Gates said recently.

Zaeef, the former senior Taliban official, who spent four years in Guantánamo prison, confirmed that the American targeted-killing campaign of Taliban leaders has been successful, but he believes that the strategy will backfire for both the US and Afghan governments. "If these people, important, known people, disappear from the [Taliban] movement, what will happen? Who should [the Afghan government] make a dialogue with?" he asks. "The fighting will not stop. I know the new generation is more extremist than the last generation. The new generation will not listen to anyone. This is a dangerous thing. It will be bad for the Americans, but it will be worse for the people of Afghanistan."

Evidence of this can be found in a recent incident in Paktia province, when the Taliban leadership in Quetta, Pakistan, sent a representative to "reprimand a group of young commanders who were breaking the organization's rules," according to veteran Afghanistan journalist Anand Gopal. "But the defiant young commanders killed the cleric. While such incidents are still isolated, the danger is that as the Taliban undergo a massive demographic change in the coming years, this trend will accelerate, and the ability of Quetta to enforce decisions on its rank and file will be diminished."

Zaeef says the night raids and the targeted killings are

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Professor Alan Charles Kors is Henry Charles Lea Professor of European History at the University of Pennsylvania. He earned his M.A. and Ph.D. from Harvard University. Professor Kors is the author and editor of several books on European intellectual history and served as editor-in-chief of Oxford University Press's *Encyclopedia of the Enlightenment*.

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strengthening the Taliban and inspiring more people "to become extremist against the Americans." US political and military leaders, he says, "are thinking, 'When we scare the people, they should be quiet.' But this is a different nation. When you are killing one person, four or five others rise against you. If you are killing five people, twenty, at least, are rising against you. When you are disrespecting the people or the honor of the people in one village, the whole village becomes against you. This is creating hatred against Americans."

The US killing of civilians, combined with a widely held perception that the Afghan government exists only for facilitating the corruption of powerful warlords, drug dealers and war criminals, is producing a situation in which the Taliban and the Haqqani network are gaining support from the Pashtun heartland in communities that would not otherwise be backing them. Since 2005, when Zaeef was released from Guantánamo, "the Taliban have become stronger," he says. "Are the Taliban coming from the sky?" Zaeef asks. "No, it's new people."

Zaeef and Wakil Ahmad Muttawakil, the former Taliban foreign minister, insist that the Taliban is still the umbrella under which all of the insurgent forces operate. But at the same time they acknowledge that smaller, localized militias not loyal to Mullah Mohammed Omar or the Quetta-based Taliban leadership are popping up more and more. "By killing leaders, the war will not come to an end, but on the contrary, things will get worse, which will give birth to more leaders," says Muttawakil. "Many people might not like Taliban but join them because they are being harassed by powerful Afghans or foreigners and want to get revenge." Many of these newer insurgents live in rural areas of Afghanistan and, for now, fight in their own communities rather than as part of a cohesive national rebellion. "The nature of this kind of war is that it starts from the rural areas, as it started against the Soviet Union. Gradually the war spreads to district centers and then to the center of small provinces," Muttawakil says. "The war has started in rural areas and gradually will spread to big cities."

On a practical level, the discontent in those rural areas with the corruption of the Afghan government and the consistent killing of civilians by US forces is raising the prospect that Afghans offering assistance to the Afghan government and NATO forces—such as allowing safe passage to key supply convoys—may withdraw that support.

One community leader in Logar, Hajji Showkatt, works with a network of tribal leaders across Logar and its neighboring provinces who broker complex deals with the Taliban and Haqqani network forces to refrain from attacking oil and supply convoys headed to and from Kabul. Part of this involves paying bribes to the Taliban, but the deals also rely on assurances from Showkatt and the reconciliation commission to insurgent forces that they are working to end the night raids and arrests.

In the weeks leading up to Sahib Jan's killing, Logar officials say, there had been three other night raids in the area. Sahib Jan's killing was the final straw. "At the funeral everyone was so emotional when we took his body to be buried. We cursed the Americans," Showkatt says. In response, local people—not aligned with the Taliban—attacked an oil convoy, blowing up more than a dozen trucks, according to local officials. The scorched earth left by the attack can still be seen on the highway running through Logar. "Here is the bottom line: the US is conducting actions that are killing innocent people," Showkatt says. "The Taliban use this as propaganda and say to the people, 'This is what America is about.' It makes them more powerful."

Showkatt, who fought as a mujahedeen against the Soviets, continues to protect supply convoys for the United States and Afghan governments along key routes, but he says that this is becoming increasingly difficult to justify. Showkatt and other leaders say they cannot guarantee they will continue to offer convoy protection. "In the mujahedeen times, we stopped all of the Russian convoys in this area," Showkatt boasts.

"We fought the Russians when they were here and we expelled them," adds Showkatt's friend Azrat Mohammed, a former mujahedeen commander from Logar. "Americans are not stronger than the Russians. If they continue with these actions, disrespecting our women, killing the wrong people, *inshallah*, we will rise up to defeat them too."

Throughout the Pashtun heartland of southern Afghanistan, police officials and civilians alike tell stories about personal grudges being settled through death by US night raids, where false intelligence is deliberately passed on to NATO forces to get a rival or enemy killed or captured.

Mohammed is living in a refugee camp in Pakistan, he says, for that very reason. He says he has been warned he is on a list for kill or capture. "I am too afraid to even sleep in my own home at night, so I spend most of my time in the camps in Pakistan. I am afraid the Americans will kill me," he says. "The way the Americans rely on bad intelligence to target people like me, the night raids we keep witnessing, the arrests and the torture and the killing is all making me want to pick up a weapon again. We are not by our nature against the government, but what they are doing is encouraging people to rise up against them."

In Afghanistan, Taliban commanders are fond of characterizing their fight to expel the United States and its allies with the phrase, "You've got the clocks, we've got the time." While US leaders are struggling to define what victory would look like in Afghanistan, the forces they are fighting are not. "We have two goals: freedom or martyrdom," says Taliban commander Salahuddin. "If we do not win our freedom, then we'll die honorably for its cause." The continuing US targeted-killing campaign and renewed airstrikes ordered by General Petraeus seem only to be further weakening the already fragile Karzai government. In plain terms, the United States' own actions in Afghanistan seem to be delivering the most fatal blows to its counterinsurgency strategy and its goal of winning hearts and minds. "I think that the Americans are already defeated in Afghanistan, they are just not accepting it," says former Taliban official Zaeef.

"If the US pulls out, my heart will be very sad because there will be a civil war," says Asif Mohammed, a young driver who escorts supply convoys to Kabul. "If they stay, they will continue killing our women and children." In the end, there could be the worst of both worlds: an escalation in raids by US Special Operations Forces, with their heavy toll on civilians, and a failed counterinsurgency campaign incapable of stopping a civil war. ■

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Judging the War Crimes Tribunal

The International Criminal Court has had setbacks—but it's already having an impact.

by BARBARA CROSSETTE

Less than two decades ago the concentration camps, mass killings and rapes in Bosnia sent a blunt reminder that a modern era of genocide and crimes against humanity—with its millions of victims in Mao's China, Stalin's Russia, Nazi Germany and Cambodia under the Khmer Rouge—was not over. Bosnia was followed by Rwanda in 1994. By the late 1990s the United Nations was propelled, or shamed, into action. War crimes tribunals were established to try those responsible for the carnage in the former Yugoslavia and Rwanda; courts for Cambodia and Sierra Leone would come later. The country-specific courts proved to be templates for something much more ambitious: a permanent international court to try the perpetrators and masterminds of atrocities.

KAREN CALDICOTT

In 1998, after long negotiations, 120 nations adopted the Rome Statute (named for the city of its birth), and the International Criminal Court (ICC) came into existence. Four years and sixty country ratifications later, the court was preparing to open for business. In 2003 a prosecutor was sworn in: Luis Moreno-Ocampo of Argentina, a human rights lawyer and prosecutor whose résumé includes bringing to trial senior Argentine junta commanders from the period of army rule in the 1970s and early '80s. More recently he had been a visiting professor at Stanford and Harvard.

For an institution of this historic significance and complexity, the process of establishing the ICC was accomplished in record time, driven by events. And there were ripple effects. When the court began issuing arrest warrants for those charged with being most responsible for mass crimes—in Sudan, Uganda, the Democratic Republic of Congo—the idea of justice beyond the manipulative reach of autocrats and warlords began to have an impact on public perceptions. In Gulu, in northern Uganda, the court has become part of the conversation about what to do with the leader of the catastrophically brutal Lord's Resistance Army, Joseph Kony (who is under an arrest warrant), if and when he is found. In Kenya the possibility of the court's involvement in determining culpability for political violence in 2008 is fiercely debated. African nations have been active in invoking the court's jurisdiction. Kenyan environmental activist and Nobel Peace Prize winner Wangari Maathai told the Inter Press Service in June that the ICC is the only hope for abused citizens everywhere.

In the United States, where the court is not very well known, the study of international criminal law has nonetheless grown—some say exponentially—in leading law schools. New York University, Columbia, Georgetown and Duke are among those with faculty specialists offering courses and writing papers that expand thinking about the contemporary war crimes courts. New links are being forged between human rights law and international criminal law.

"There's been a sea change in the last ten to fifteen years," says David Scheffer, US negotiator in the creation of the ICC and now a professor at Northwestern Law as well as director of the university's Center for International Human Rights. "International criminal law as a course offering was extremely rare until the late 1990s. Now almost every law school that is a major law school in this country has to offer international criminal law to be credible." Undergraduates, too, are signing up for courses that look specifically at genocide in Rwanda, Balkans atrocities or brutal African civil conflict, Scheffer adds. "As students pursue both international criminal law and international human rights law, the two dovetail with each other very nicely."

In the real world, however, the ICC is struggling with the delays and setbacks that are to be expected when scores of countries with differing opinions and political cultures are asked to live up to the treaties they sign. Similarly, in the regional tribunals, for example in Bosnia and Cambodia, there have been long delays and a widespread feeling among the population that those who suffered are not benefiting from the trials.

Two high-profile cases illustrate these quandaries. No country—least of all in Africa—has tried to detain President Omar al-Bashir of Sudan, wanted in arrest warrants on charges of war crimes, crimes against humanity and genocide in Darfur. The African Union opposes the warrants. When Bashir visited neighboring Chad in July, where the government was treaty-bound to arrest him, he was welcomed officially as "a valued friend." A visit to Kenya, whose government is also an ICC signatory, followed. Kenyan officials said that African Union decisions trumped the court's demands.

There are also diplomats and officials in the global North who argue that the pursuit of Bashir and other prominent Sudanese officials is no way to get lasting peace in Darfur, where the UN says at least 300,000 people have died. They point to the success, so far, of the negotiated settlement of another dispute in Sudan, between its Arab-Muslim North and Christian and animist South, which is scheduled to culminate in a referendum on southern independence in January. Scott Gration, the Obama administration's special envoy to Sudan, has opened rifts between himself and Congress—and reportedly between himself and Susan Rice, the US ambassador to

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the UN—by meeting with Sudanese government officials and emphasizing that there has to be dialogue with them if Sudan's North-South dispute can move to lasting resolution. He has also been critical of the ICC indictments against Bashir.

Alex de Waal of the Social Science Research Council, who has written extensively on Sudan and is considered a global expert, has warned that hot pursuit of Bashir for the crimes of Darfur could have negative consequences for resolving the North-South conflict. He wrote in the March 19, 2007, issue of *The Nation*: "While the crisis in Darfur has captured the attention of Western activists, that conflict developed partly because of the incomplete resolution of the North-South war. And both conflicts arose from the same general phenomenon: regional discontent with exploitation, of both people and resources, by the central government in Khartoum. The Darfur crisis can neither be understood nor resolved apart from the more deep-rooted North-South confrontation."

Mahmood Mamdani, Herbert Lehman Professor of Government at Columbia University and the author of *Saviors and Survivors: Darfur, Politics and the War on Terror*, is a leading critic of the court. Mamdani argues that its prosecutor has failed to understand or acknowledge the history of the conflict in Darfur and has glossed over the complexities of the situation to create a simplistic and unfair case against Bashir. He also sees the ICC as a tool of big powers acting under cover of humanitarian intervention. "The emphasis on big powers as the protectors of rights internationally is increasingly being twinned with an emphasis on big powers as enforcers of justice internationally," he wrote in the conclusion to his book, excerpted by *The Nation* two years ago ["The New Humanitarian Order," September 29, 2008]. "This much is clear from a critical look at the short history of the International Criminal Court."

'Anyone who thinks this can be done at an extremely efficient and rapid pace…is simply fooling themselves.' —David Scheffer

The second tangled case is that of Thomas Lubanga Dyilo, a rebel warlord in Congo who, Moreno-Ocampo says, "recruited and trained hundreds of children to kill, pillage and rape." That trial was recently suspended because the prosecutor refused to turn over documents to Lubanga's lawyers that might have put at great risk victims willing to testify. Moreno-Ocampo dug in his heels and won an appeal on the ground that witnesses and others who testify must be protected. The Lubanga trial can now proceed in The Hague, where the ICC is based.

"We believe we have the duty to protect, and we are trying to be sure that the protection of victims is established," Moreno-Ocampo said in an interview from The Hague, explaining that in establishing the principles and procedures of the court every step he takes is new terrain. "That's what the debate is about—the scope of witness protection. We cannot expose the lives of people who cooperate with us." He said that even before a formal trial opens, the case of Lubanga has had an impact: "In Nepal, 3,000 kids were released as soldiers because of the Lubanga case."

Scheffer of Northwestern says, "There's a large point to be made here. This is a process that investigates and prosecutes atrocity crimes—massive assaults on large numbers of civilians and egregious conduct of war against soldiers. Anyone who thinks this can be done at an extremely efficient and rapid pace, as we might see in the Cook County courthouse in your basic criminal case there, is simply fooling themselves."

Many people have petitioned the court to open cases. Between July 2002 and mid-August of this year, the prosecutor received over 8,700 communications from more than 140 countries. A majority of those requests were from people in the United States, Britain, Germany, Russia and France.

There are only three formal ways a case may be put on the docket of the ICC: a referral from the UN Security Council, a request by a nation that is a full member of the court or directly by the prosecutor, acting alone or on the request of others. Numerous critics say that in using their own legal teams to draft the court's statute, the big powers have built in, or are at least enjoying, an unfair immunity. This is a valid point. Take, for example, the US invasion of Iraq, Russia's of Chechnya, the Chinese in Tibet, Israel in Gaza in 2008–09 or, more recently, Indian forces in Kashmir—none of which have been formally referred for investigation or prosecution.

Under the first route to trial, there is no way that a case will be brought against any of the five permanent members of the Security Council, which hold veto power. Three of those P-5—China, Russia and the United States—are not full members of the court. (Three out of four major aspirants to permanent membership, Brazil, Germany and Japan, are full ICC members. India, which has a powerful security apparatus accused of many serious abuses but protected by law against prosecution, is not.) This means that a case cannot be referred directly by those countries, which are, in any case, further protected by "complementarity." Under that provision, any nation has the right to try an accused person first; only if it cannot or will not do so can the court officially step in. Bashir and others were formally charged with atrocities in Darfur after a referral from the Security Council; no effort has been made within Sudan to put those accused on trial (only individuals may be accused, not nations, armies or other institutions).

Nations with full membership in the ICC (the 114 that have signed and ratified the Rome Statute) can lodge cases against nonmembers. Afghanistan, for example, is a member and could theoretically bring charges against US citizens at some point; Iraq is not. Israel is not a member—it signed the treaty but then, like the United States under George W. Bush, withdrew cooperation. The Central African Republic is a court member, and as such requested the arrest of Jean-Pierre Bemba Gombo, a Congolese warlord responsible for large-scale attacks across the border into the CAR (Congo is also a court member).

Uganda is an interesting footnote. The birthplace of the

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Lord's Resistance Army, Uganda is an ICC member, and its government requested and got arrest warrants for LRA leader Joseph Kony and several of his colleagues, all Ugandan citizens. The LRA, which has been largely driven out of Uganda, has been accused of atrocities in several neighboring countries, potentially broadening the scope of the charges.

The first case recommended by the prosecutor acting on his own initiative (with some preliminary work and backing from eminent Africans, including Kofi Annan) deals with leaders of political violence in Kenya after the disputed 2007 election. However, that case, like all others, must first clear a pretrial panel of judges, who essentially conduct their own evaluation of the charges and preliminary evidence. The pretrial chamber, if it agrees there is a case, then sends it to the trial chamber. Meanwhile, an appeals panel can hear challenges. Numerous appeals can hold up the progress of cases for extended periods.

When asked repeatedly why he has not gone after bigger fish—or why he has expended so much effort on Africa—Moreno-Ocampo points out that African nations have requested arrests and trials, and Sudan was referred by the Security Council after a huge international outcry over several hundred thousand deaths in Darfur. He also says that he wants to choose cases he can win, or at least ones that can go to trial. Evidence for the scale and intent of crimes for which the court was created (genocide, crimes against humanity and war crimes) would be hard to amass and pin on individuals when there is no apparent mastermind, like Slobodan Milosevic or Radovan Karadzic in the Balkans tribunal, or identified perpetrators of genocidal acts in Rwanda. France recently arrested a Rwandan Hutu, Callixte Mbarushimana, for crimes committed in Congo, where he operated after apparently fleeing Rwanda in 1994. The ICC had charged him with crimes against humanity and war crimes allegedly committed in 2009 in Congo's Kivu region, where widespread violence has long severely tested UN peacekeeping missions. But the brutal reality is that "collateral damage" alone, or unintended unleashing of sectarian or ethnic violence, like that unleashed by the American invasion of Iraq, would be hard to prove as a war crime under current definitions.

Moreno-Ocampo has been criticized for an aggressive, noncollegial style and for not putting enough time into the management of the prosecutorial section, while traveling widely and speaking to many audiences about the court. Although few people anywhere would recognize the court's judges, who are drawn from all over the world, Moreno-Ocampo has become its public face. He chuckles a little wearily at hearing these indictments read to him again. There seem to be no chinks in his self-confidence. "I have different responsibilities. I have to do all of them," he says. "I have to be the best lawyer. We requested thirteen arrest warrants. We got all of them. We're very confident that we will get the convictions. We have debates, and sometimes people have different opinions, but that's normal." Moreno-Ocampo has to work with the cumbersome three-chamber court structure: the pretrial chamber, which must approve cases before they can proceed with indictments and arrest warrants; the trial chamber, which hears cases; and the appeals chamber, which not only would hear petitions against convictions or acquittals but is also called on to decide disputes that arise while cases are in progress, such as the debate over protection of victims.

"I have to be the best possible investigator," Moreno-Ocampo continues. "We have to investigate in impossible circumstances. Darfur was our biggest challenge. We had to investigate without visiting the crime scene. We did it in twenty-one months." Bashir was the high-profile target, he said, but the prosecution soon also focused on a lesser-known Sudanese official, Ahmad Harun, for whom an arrest warrant has also been issued. Moreno-Ocampo says that Harun, a former interior minister who coordinated early attacks on villages, is now governor of Kordofan, a critical province from which he can recruit militias to attack civilians in southern Sudan, where peace is still fragile. The prosecutor's office believes Harun could provide a trove of information on how the crimes in Darfur were organized and carried out.

Moreno-Ocampo continues with his list of duties. "And then, I have to be manager. I have 300 people from seventy countries working together." To keep the court in the public eye, he says, "we are preparing policy papers explaining exactly what we are doing."

Washington's relations with the ICC would be the stuff of comedy, were the issue not so profoundly serious. Under Scheffer, the Clinton administration's ambassador at large for war crimes issues in the late 1990s, the United States took an active part in writing the statute that created the court. From the start it was pre-emptively opposed in the Pentagon, which feared that American service members and officials would be targeted, and by a right-wing posse in the Senate, where the late Jesse Helms announced that the treaty would be "dead on arrival" if it was sent for ratification. Clinton had a hard time deciding whether to sign the Rome Statute.

"President Clinton was known for not making decisions until the very last moment," Scheffer said recently, recalling the tense last forty-eight hours before the deadline for signing on December 31, 2000 (nations had to adhere to the Rome Statute by that date in order to be founding members of the court, though ratification could come later). The midnight deadline fell on a Sunday night—New Year's Eve. A blizzard had buried Washington and New York, where the treaty was waiting at the UN. Scheffer, in Ashburn, Virginia, was ordered to go to New York and wait for instructions. There had been no decision from Clinton, who was at Camp David.

There were no flights along the snowed-in East Coast, but Scheffer managed to get to New York by train on deadline day. After his arrival Secretary of State Madeleine Albright called and told him Clinton had made his decision: Scheffer was authorized to go to the UN and sign. He slogged on foot through the snow to First Avenue—no taxis were available—while trying to round up the UN's chief legal counsel, Hans Corell, to open the building. Washington had to fax Scheffer the necessary plenary powers to sign. With only hours to spare, the United States joined the ICC. Scheffer can be seen wearing his snow boots in the official photo.

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In retrospect, that may have been the high point in the saga. In his waning days in office, Clinton never considered sending the treaty to the Senate for ratification. And not long after taking office, President Bush renounced the American signature in a letter to the court drafted by John Bolton, under secretary of state for arms control and international security, later UN ambassador, who had long taken the position that the United States should not be subject to international law.

Legal experts have argued, however, that it is not possible to "unsign" the Rome treaty, although a nation can go on record saying it will not abide by or take part in the court's activities, which is what the Bush administration in effect did. If this is so, then it would require only a letter from President Obama to recommit the United States formally as an active observer, even without discussing ratification. That might have been politically possible a year or more ago, but advocates of the court say that in the current climate—with a looming GOP takeover of the House and possibly the Senate—sending such a letter would take a monumental act of courage and salesmanship, given the right-wing hostility to the very idea of the court. Senate ratification, which would give Washington a full say in court affairs, seems out of the question.

William Pace, leader of the Coalition for the International Criminal Court, a New York–based partnership of more than 2,500 civil society organizations from 150 countries, says the United States is at least a decade or more away from any serious consideration of full membership. But Obama is showing increasing interest. "The US has sent a much clearer message to governments and to officials of the court that it is interested in being more constructively engaged in the coming years," Pace says.

Washington began inching slowly toward recognition even while Bush was still in office. A watershed was its 2005 decision not to block a UN Security Council resolution referring the case of Bashir and Darfur to the court. Instead of using its veto, Washington abstained, along with Algeria, Brazil and China.

In late May of this year the Obama administration, which has been taking part as an observer in meetings of the court's member nations, sent a high-level team to Kampala, Uganda, for the first extensive official review of the court's progress. The relatively large US team was led by Harold Koh, legal adviser to the State Department, and Stephen Rapp, ambassador at large for war crimes issues. Koh told reporters after the review ended that the US delegation "worked extremely hard to resume engagement with the court."

The most contentious issue on the table—and of prime importance to the United States—was the crime of aggression. When the ICC was created, four crimes were placed within its jurisdiction: genocide, crimes against humanity, war crimes and the crime of aggression. But no clear definition of aggression could be agreed on, so years of negotiations followed. When the review conference opened in June, concrete proposals were finally ready. The definition adopted in Kampala, to the surprise and satisfaction of many, was this: "The planning, preparation, initiation or execution, by a person in a position effectively to exercise control over or to direct the political or military action of a State, of an act of aggression which, by its character, gravity and scale, constitutes a manifest violation of the Charter of the United Nations." Think US invasion of Iraq in 2003.

The Kampala conference, having agreed on a definition, proceeded to build in a seven-year moratorium on action. Thirty nations must ratify the definition, and for a year afterward no one may be charged. This means no action until 2017 at the earliest. There are no ex post facto provisions of the kind that allow ad hoc tribunals such as those for Cambodia, Rwanda, the former Yugoslavia and Sierra Leone (all of which operate separately from the ICC) to dig into history and address crimes that predate the formation of the tribunals. In other words, there's no chance of a trial connected to the American wars in Iraq and Afghanistan.

At the Coalition for the International Criminal Court, Pace says the delay in implementing the crime of aggression is not necessarily a setback. "Having the crime of aggression in a major international treaty is itself a major development in international law, even though the Security Council and the ICC must wait several years before exercising jurisdiction. For now, it is more prevention than detention."

> 'This is a global social contract; 114 states agree to…end genocide and war crimes.'
> —chief prosecutor Luis Moreno-Ocampo

The US delegation in Kampala was clearly relieved. Koh restated at a briefing later that the United States has safeguards against what officials have called "politically motivated" attempts to charge Americans, even if Washington ratifies the court treaty someday. "The prosecutor cannot charge nationals of nonstate parties, including US nationals, with a crime of aggression," Koh said. "And if we become a state party [i.e., ratify] we'd still have the option to opt out from having our nationals prosecuted for aggression. So we ensure total protection for our armed forces and other US nationals going forward."

Moreno-Ocampo, whose nonrenewable term runs out in mid-2012, believes the court will gradually overcome teething details and management concerns. "This is a global social contract," he said. "One hundred fourteen states agree to commit themselves to end genocide and war crimes, and we commit to bring issues to the International Criminal Court when they cannot act." He says the "shadow of the court" is already large. He sees its preventive power as providing great hope that abuses will diminish as arrests are sought and trials held. Moreno-Ocampo would like to see convictions decided while he is in office, but he accepts that these cases may take years. He returns to the case of Darfur.

"It's a matter of time," he says. "Harun, Bashir—their destiny is to face justice, whether in two years or twenty years. The court is permanent. The court can wait. The victims, they can't wait. The victims are suffering genocide today. Stopping the crime is the priority." ■

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Books & the Arts.

DOUG CHAYKA

The Pirate's Prophet

by DAVID WALLACE-WELLS

In the fall of 1956, a young editor at *Fortune* magazine published a worrywart prospectus of corporate culture and its corrosive effects on American genius. The man was William Whyte, once a traveling salesman for Vick's VapoRub and later a mentor to Jane Jacobs, and the book was called *The Organization Man*.

It was a peculiar little book—a jeremiad in a gray flannel suit—and it made for a peculiar bestseller, but a telling one. In that decade and the one that followed, dozens, if not hundreds, of popular works of speculative sociology were published—*The Lonely Crowd*, *The Power Elite*, *The Triumph of the Therapeutic*—as postwar America found its imperial footing through ever more elaborate feats of self-scrutiny. But *The Organization Man* distinguished itself through its emphasis on the fate of science, and the plight of the scientist, in an era of company men and corporate *ketman* that Whyte believed was "not only repelling talent but smothering it." "Management has tried to adjust the scientist to The Organization rather than The Organization to the scientist," he wrote. "It can do this with the mediocre and still have a harmonious group. It cannot do this with the brilliant; only freedom will make them harmonious." "The first-rate man has a prior intellectual commitment," he warned; "in no field, except the arts, does the elevation of administrative values hold more dangers."

This central anxiety of *The Organization Man*, that scientific inquiry demands insulation against corporatism, was echoed by many leaders of the sociologist caste—Thomas Kuhn, Talcott Parsons, Michael Polanyi and, most pusillanimous, Robert Merton, long credited with initiating the sociological study of science, and now largely known for coining the terms "self-fulfilling prophecy" and "unintended consequence." "The substantive findings of science are a product of social collaboration and are assigned to the community," Merton noted. "They constitute a common heritage in which the equity of the individual producer is severely limited." This was not by accident: "By the rationale of the scientific ethic," Merton wrote, "property rights in science are whittled down to a bare minimum." Communism, "in the nontechnical and extended sense," he said, was an "integral element" of that ethic, and an element that demanded protection: "The communism of the scientific ethos is incompatible with the definition of technology as 'private property' in a capitalistic society."

Common as Air
Revolution, Art, and Ownership.
By Lewis Hyde.
Farrar, Straus and Giroux. 306 pp. $26.

But the experience of cold war scientists, captured in what the historian Steven Shapin calls the "shop-floor" literature of trade journals and testimonials, memoirs and memorandums, suggests that this perceived conflict between corporate values and scientific inquiry might be a "total illegitimacy." "With vanishingly few exceptions—exceptions that may dissolve on further investigation—unhappy industrial scientists," Shapin writes, of the kind forewarned by Whyte, "*just do not exist*." This phenomenon was in part a credit to the ingenuity of corporations in assimilating and accommodating the values of free inquiry in the supervisory age of industrial psychology. As Shapin points out, the governing aphorism "When you lock the laboratory door, you lock out more than you lock in" comes not from Merton or Whyte

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but from Charles "Boss" Kettering of General Motors, who also insisted, famously, "You can't keep books on research."

But it was also a credit to the ingenuity of science. In the half-century since the publication of *The Organization Man*, the imperious enterprise then called "applied science" and now "technology" has triumphed spectacularly, and the story of the resilience and adaptability of scientific inquiry is among the major narratives of these consumer decades. Despite perennial fears that guided practice will crowd out the pursuit of "pure science," the pace of new research seems only to have quickened: one can argue that the benefits of research have been distributed inequitably, even unethically, but one can no longer argue, with Merton and Whyte, that the scientific enterprise is necessarily incompatible with the major source of its funding. We live in a culture shaped by the insights of science, engraved with its worldview and governed almost totally by respect for its authority, even as "the old notion of the scientist as hero has been replaced," as the linguist and evolutionary psychologist Steven Pinker has put it, "by the idea of scientists as amoral nerds at best." The near-complete eclipse of self-directed science surely disappointed those, like Merton and Whyte, who cherished the vision of the tinkering scientist as Romantic genius, but professionalization has been a tremendous boon not just to those drawing paychecks from laboratory research but for those many more of us drawing dividends. In his landmark 1959 lecture "The Two Cultures," C.P. Snow may have lamented the relative stature of science in a postwar establishment enamored with the humanities—but, as Shapin has written, "he was presiding not at a funeral but at a christening."

Today it is that other culture, the arts, that feels itself imperiled. Not just by the ascendant sciences—though that challenge can be seen in the resort to evolutionary psychology and neuroscience among novelists, literary critics and philosophers—but also by the corporation, and in particular the corporate ownership of culture, enforced by a copyright regime that has grown steadily since its eighteenth-century inception from fourteen years, to twenty-eight, to fifty and presently to seventy years after death for individuals and ninety-five for corporations. The public storehouse of natural science and vernacular culture that lies beyond the threshold of those protections has shown itself vulnerable, too, to private capture, as companies and entrepreneurs claim more and more material in the name of what has come to be known as intellectual property—"an idea not just new but historically strange," Lewis Hyde writes in his new, bracing *Common as Air*, an exhortative history of cultural propriety. "It belongs to our times, to be sure, but if we are to examine it with any care it helps to know how new it really is; it's newer than automobiles, newer than lightbulbs, newer than jazz."

Hyde is ringleader and chief theorist to free culture warriors: a poet, critic, communitarian.

In recent years there has been a challenge mounted by a small army of revanchist writers to the dispiriting portrait of the artist as organization man—a contrasting portrait of the artist as confidence man, pirate, plagiarist and thief. The artist in this portrait is a troublemaker, and the volume of trouble is thought to be a decent proxy for the value of artwork. It is a vision of creative labor as a form of permanent revolution.

Hyde is ringleader and chief theorist to these free culture warriors—a poet and critic, moralist and communitarian. *Common as Air* is only his third work of nonfiction, and he has been laboring over it for more than a decade. He describes himself as a "scholar without institution," but he has appointments at Harvard and Kenyon, and another at a Cambridge architecture firm where he works, rent-free, as a "poet in residence." He has not published a book of poems since 1988. It is his only book of poems.

Hyde's reputation and near-shamanic aura have arisen, instead, almost entirely from his first book, *The Gift*, a beguiling work of associative anthropology published in 1983. In it, Hyde depicts a glorious "economy of the creative spirit," a "shadow economy" in which artworks are bestowed as gifts rather than traded as commodities. For Hyde it is an economy irreconcilable with our conventional systems of property, value and exchange. *The Gift* is often said to be difficult, if not impossible, to summarize, but it is in fact quite easy to describe. The book is a sentimental curio, an artifact of our congenital cult of the artist and a survey and prehistory of what might be called the null-commodity fetish—the preference, particularly acute among the creative classes, for work antagonistic to establishment values, for careers insulated against the unseemly forces of acquisitive exchange, for market spandrels rather than market darlings. Throughout, Hyde works with distinctions, between noble pursuits and corrupt ones, familiar to readers of Whyte and Merton but borrowed from religious discourse: in place of divinity he substitutes creativity; in place of the sacred, the expressive; in place of the oracle or priest, the artist and writer.

The Gift is an elegantly Romantic book, and writers have been predictably flattered by it, praising Hyde to kindred spirits and passing the book among themselves as a kind of talisman. Margaret Atwood has said that she maintains a collection of a half-dozen copies, so that she might always have one at hand when counseling a young artist or writer. ("It gets at the core of their dilemma: how to maintain yourself alive in the world of money, when the essential part of what you do cannot be bought or sold.") Geoff Dyer, Zadie Smith and David Foster Wallace have all praised *The Gift* as a major touchstone, not merely an incisive study but, as Smith has suggested, a road map to the writing life with a special key to what makes it uniquely valuable: "A manifesto of sorts for anyone who makes art, cares for it and understands that our most precious possessions are not for sale and the greatest contracts are achieved without anyone signing on the dotted line."

The Gift has also captivated a set of theorists and writers—Henry Jenkins, Lawrence Lessig, Richard Stallman, Siva Vaidhyanathan and Jonathan Zittrain, to name a handful—devoted to the proposition that intellectual property is a paradox and the American copyright regime a corporate handout. The cultural patrimony of past generations is best honored, they believe, through open appropriation, condoned by what is often called the principle of "the commons"—the idea that our relationship to culture should be made to mirror the relationship of peasants to land in late medieval and early modern England. That is, our cultural patrimony should be owned collectively, used in common and governed by a regime of informal customs oriented not toward profit but against it.

More than two decades after its publication, *The Gift* continues to rally those who have imported this hacker ethos into the realm of cultural production, who declare that if we believe in culture then we must ensure that it is "free." (The word "free" has many meanings. That the free culture movement comprises a strange and contradictory alliance of people with various political and cultural identities—libertarians and anar-

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The Myth of "Settlements"

Are they indeed the "root cause" of violence in the Middle East?

One of the enduring myths about the Arab-Israeli conflict is that the "settlements" in Judea/Samaria (often called the "West Bank") are the source of the conflict between the Jews and the so-called "Palestinians." If that problem were solved—in other words, if Israel would turn Judea/Samaria over to the "Palestinians"—peace would prevail and the century-old conflict would be ended.

What are the facts?

Erroneous Assumptions: Various fallacies and erroneous assumptions underlie that belief, so often repeated that even those who are friendly to Israel, even many Jews in Israel and in the United States, have come to accept it. Our government, generally friendly to and supportive of Israel, has bought into the myth of the "settlements;" it has regularly and insistently requested that the "settlements" be abandoned and, one supposes, be turned over lock, stock, and barrel to those who are sworn to destroy Israel.

The very designation of the Jewish inhabitants of Judea/Samaria as "settlers" is inappropriate, because it connotes something foreign, intrusive and temporary, something that is purposefully and maliciously imposed. But that is nonsense of course. Why would the quarter-million Jews who live in Judea/Samaria be any more "intrusive" or any more "illegal" than the more than one million Arabs who live in peace in what is called "Israel proper" or west of the so-called "green line"? Nobody considers their presence as intrusive; nobody talks of them as an obstacle to peace.

Most of us, regrettably perhaps, are too worldly and too "sophisticated" to put much stock in the argument that the territories in question, Judea and Samaria, are indeed the ancestral homeland of the Jewish people, that they were promised by God to Abraham and his seed in perpetuity. Jews have lived in that country without interruption since Biblical times. There is no reason why they shouldn't live there now. Why should Judea/Samaria be the only place in the world (except for such countries as Saudi Arabia) where Jews cannot live?

Legal Aspects: But how about the legal aspect of this matter? Isn't the "West Bank" "occupied territory" and therefore the Jews have no right to be there? But the historic reality is quite different. Very briefly: The Ottoman Empire was the sovereign in the entire area. In 1917, while World War I was still raging, Britain issued the Balfour Declaration. It designated "Palestine"—extending throughout what is now Israel (including the "West Bank") and what is now the Kingdom of Jordan—as the homeland for the Jewish people. In 1922, the League of Nations ratified the Balfour Declaration and designated Britain as the mandatory power. Regrettably, Britain, for its own imperial reasons and purposes, separated 76 percent of the land—that lying beyond the Jordan River—to create the kingdom of Trans-Jordan (now Jordan) and made it inaccessible to Jews. In 1947, tired of the constant bloodletting between Arabs and Jews, the British threw in the towel and abandoned the Mandate. The UN took over. It devised a plan by which the land west of the Jordan River would be split between the Jews and the Arabs. The Jews, though with heavy heart, accepted the plan. The Arabs virulently rejected it and invaded the nascent Jewish state with the armies of five countries, so as to destroy it at its birth. Miraculously, the Jews prevailed and the State of Israel was born. When the smoke of battle cleared, Jordan was in possession of the West Bank and Egypt in possession of Gaza. They were the "occupiers" and they proceeded to kill many Jews and to drive out the rest. They systematically destroyed all Jewish holy places and all vestiges of Jewish presence. The area was "judenrein."

> "Here is a thought: How about a deal by which the 'settlements' were indeed abandoned, all the Jews were to move to 'Israel proper' and all the Arabs living in Israel would be transferred to Judea/Samaria or to wherever else they wanted to go."

In the Six-Day War of 1967, the Jews reconquered the territories. The concept that Jewish presence in Judea/Samaria is illegal and that the Jews are occupiers is bizarre. It just has been repeated so often and with such vigor that many people have come to accept it.

How about the "Palestinians," whose patrimony this territory supposedly is and about whose olive trees and orange groves we hear endlessly? There is no such people. They are Arabs—the same people as in Lebanon, Syria, Jordan, and beyond. Most of them migrated into the territories and to "Israel proper," attracted by Jewish prosperity and industry. The concept of "Palestinians" as applied to Arabs and as a distinct nationality urgently in need of their own twenty-third Arab state, is a fairly new one; it was not invented until after 1948, when the State of Israel was founded.

But here's a thought: How about a deal by which the "settlements" were indeed abandoned and all the Jews were to move to "Israel proper." At the same time, all the Arabs living in Israel would be transferred to Judea/Samaria or to wherever else they wanted to go. That would indeed make Judea/Samaria "*judenrein*," and what are now Arab lands in Israel would be "*arabrein*." The Arabs could then live in a fully autonomous area in eastern Israel and peace, one would hope, would descend on the holy land.

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chists, Silicon Valley entrepreneurs and East Coast artists—is in part a testament to its elasticity.) Jonathan Lethem, who has called *The Gift* an "epiphany, in sculpted prose," outed himself as a plagiarist of Hyde in a carefully calibrated essay on copyright and intellectual property for *Harper's Magazine* in which he, describing all good artwork as plagiaristic, called for balder appropriation. In *Reality Hunger*, a commonplace book of aphorisms and appropriations, essayist David Shields, too, declares war on intellectual property. "Reality cannot be copyrighted," Shields avows. "Reality-based art hijacks its material and doesn't apologize."

The portrait of the artist as bandit is at the center of Hyde's second treatise, *Trickster Makes This World*, published in 1998. *Trickster* is a meandering foray into the study of myth, and of that truth-teller troublemaker living just beyond society who goes by the names of Hermes, Mercury and Coyote, among others. The book is less esteemed than *The Gift* (although it is Michael Chabon's favorite of Hyde's works) and is more rarely discussed than *Common as Air* is sure to be. But it may be Hyde's most exemplary work, a richly detailed but loosely conceived anthropological picaresque—anthropology in the nineteenth-century sense of collecting artifacts as a demonstration of sophistication rather than assembling them into a reliable and coherent narrative.

Hyde's new book brings his previous two into binocular focus and should gratify his devotees as well as those free culture advocates who believe that the work of artists and writers demands resistance to the market. In it, Hyde extends the proposition that collective ownership of culture should be not just a political ideal or a legal goal but a noble and actionable form of nonviolent resistance. *Common as Air* is a deeply felt tribute to piracy—and in particular to those American pirates known to most of us more prosaically as the founding fathers.

Most of what we know as pirate myth—peg legs, buried treasure, the Jolly Roger—appeared first as purported fact in *A General History of the Robberies and Murders of the most notorious Pirates*, an elaborate biographical dictionary published in 1724 by Daniel Defoe. Or at least many people think it was written by Defoe. It's hard to tell because Defoe published almost exclusively under pseudonyms—at least 198, according to a recent study—giving him a shaky claim to the authorship of more than 500 books. "Defoe," too, was a pseudonym: he was born Daniel Foe and adopted the aristocratic affectation upon his release from debtors' prison in his mid-30s, whereupon he hoped to make a legitimate go of it as a hosiery salesman. He had already participated in one plot to overthrow a king; he would soon storm Parliament in support of a new one. Later, he would be arrested and pilloried for publishing a satire urging the extermination of religious dissenters, of which, as a Puritan, he was one. (His cheeky "Hymn of the Pillory" inspired onlookers to shower him with flowers rather than the usual rocks.) He was a spy for Queen Anne and a merciless pamphleteer who also produced kitchen-sink volumes stuffed with materials quoted, appropriated and ventriloquized. He invented much of what he published as journalism—at one time he ran eight newspapers, writing most of the copy for each himself—and the books for which he is celebrated today as a father of the English novel were published, and advertised, as fact.

Defoe was also the foremost advocate of intellectual property of his day, the era in which that concept was first coming into use. (Hyde's contention that intellectual property is a recent invention is a legalistic and semantic one; copyright law, which endows authors with the exclusive right to reproduce their own work, is a product of Restoration England.) In his 1704 "Essay on the Regulation of the Press" Defoe created the first taxonomy of intellectual piracy, including among the enumerated sins abridgment and "pirating Books in smaller Print, and meaner Paper." "This is down-right robbing on the High-way, or cutting a Purse," he wrote, and though he believed the unauthorized publishing of work by another man was "every jot as unjust as lying with their Wives," the greater threat posed by piracy, he believed, was to the public:

> This is really a most injurious piece of Violence, and a Grievance to all Mankind; for it not only robs their Neighbour of their just Right, but it robs Men of the due Reward of Industry, the Prize of Learning, and the Benefit of their Studies; in the next Place, it robs the Reader, by printing Copies of other Men uncorrect and imperfect, making surreptitious and spurious Collections, and innumerable Errors, by which the Design of the Author is often inverted, conceal'd, or destroy'd, and the Information the World would reap by a curious and well studied Discourse, is dwindled into Confusion and Nonsense.

That the most profligate author in Restoration England was also its most strident copyright advocate is no coincidence. *Robinson Crusoe* was not just the bestselling book of its time but also the most pirated, inspiring an entire genre of derivative works that came to be known as Robinsonades. (*The Swiss Family Robinson* is the most enduring example.) And as Adrian Johns has argued in his judicious history *Piracy*, the laws governing intellectual property have always lagged behind "piratical practices": each major protection has been introduced as a countermeasure, not out of authorial principle but professional self-defense, at least according to the relevant guilds.

Nor should it come as a surprise that the same era produced both the graphomaniac Defoe and the insatiable pirates who appropriated his work. The intellectual property wars that engulfed them were staged at the height of the Restoration printing boom, and were born of the crisis of authority produced when a newly literate public found itself tasked, for the first time, with matters of public interest. It was only when authorship became a source of broad social authority that violations of its principles could earn sustained public scrutiny, and only when artisanal guilds arose to challenge the medieval system of royal patronage that authors began to advocate for themselves. Defoe's "Essay" was written in support of the Statute of Anne, the bill that, in 1710, became the world's first copyright law.

The Statute of Anne reflected more than the frustrations of authors. It was also, crucially, the product of guild advocacy, an effort by gentleman printers to impose some order on the anarchic print culture of the late seventeenth century. The popular press of the era, Johns writes, was "viciously partisan, violently sectarian, ruthlessly plagiaristic, and often wildly credulous." At first, as Thomas Hobbes wrote of the civil wars that tore the century apart, "there was no blood shed; they shot at one another nothing but paper." Order was imposed, Johns shows, by extending the protection offered by royal patent, bestowed in previous eras as a courtly favor, to all authors who made a new contribution to public knowledge. Now, by simple virtue of their labor, they would enjoy a "copy right." As Johns explains, the precedent of literary copyright predates that of mechanical patent, of which it was a necessary precursor, by some three-quarters of a century; as late as 1774, those who opposed the principle of intellectual property argued not that the work of the mind was exceptional but that it was no different from

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mechanical invention, as undeserving of legal protection and royal encouragement as the labors of artisans.

But in examining the meaning of copyright, Hyde looks first not at its origin in Restoration London, which he explores briefly only later, but at a mythic prehistory of cultural ownership illustrated by the English commons before enclosure. (Enclosure was the successful effort, completed in the eighteenth century, to re-establish proprietary order over the pastoral and arable lands of the English countryside that had developed over the previous several centuries a tradition of open access.) The commons were owned only nominally by local aristocrats; managed and harvested collectively by the local peasants; and protected by a ritualistic regime of rights, rents and obligations that ensured the continued husbandry of the soil and the survival of those who lived off it. "The commons bespeaks an aboriginal first condition, one that existed before labor, before cultivation, before the cash economy, and before the constitutional state with all its apparatus for the protection of property," Hyde writes reverently. "Rights in common assured a baseline of provision," and "everyone, the poor especially, had the right to glean after the harvest." Today, he writes, cheerfully surveying the many contemporary incitements to free culture, "invocations of the commons can carry with them a promise that more than air can be like air, always there for the inhaling lung."

This homily peddles an attractive but confected fantasy, animated by what the historian Jackson Lears has called Hyde's "prelapsarian vision," one that is "common to some Marxists, most romantics, and all Christian nationalists: Once upon a time, people lived in harmony with their world and one another; then they fell from grace—prodded by capitalism, scientific rationality, or original sin."

English agrarian culture before enclosure was no Eden. It was "otiose, intellectually vacant, devoid of quickening, and plain bloody poor," according to the British historian E.P. Thompson, who called "the golden age of the village community before enclosure" a "social myth." For Thompson it was a convenient utopian vision cherished by subsequent urbanized and industrialized generations and invented by enclosure in much the way the Norman invasion produced a paradisiacal pre-Norman England.

Hyde calls the tangled system of common rights before enclosure "the social security of the premodern world," but he might better have described it as a form of Plantagenet project housing—proscriptive, perpetual and designed to enforce what Defoe called "the great law of subordination." The brutality of enclosure—about which we know unfortunately more from imagination than documentation—should not distract us from the fact that the commons, too, were a class conspiracy. The commons kept peasants peasants and kept them poor, yielding subsistence but nothing more, and even that little was subject to aristocratic whims. No matter how comfortable the commoners became in their use of the land, their access to it was always controlled by local lords. If the commons were, as Hyde acknowledges, "a theater within which the life of the community is enacted and made evident," then that theater "was a place where an aristocratic society staged and displayed its rigorous and inescapable hierarchies."

But the premodern country estate is merely a metaphor for Hyde. His real history lesson covers the revolutionary generation of the American founders and particularly the debates over intellectual property that helped shape what he calls our "civic republicanism" and its aesthetic corollary, a rhetorical tradition of "self-erasure."

In Hyde's telling, the founders were as suspicious of intellectual property as they were of political authority; they believed that any interference in the exchange of ideas restricted the freedom of the press and served to protect not the author but the throne, which dictated the distribution of copyrights. (Such privileges they called, pointedly, "monopolies.") In his first published political essay, John Adams opposed the Stamp Act not so much as a tax imposition but as a gilded form of censorship. It was a reasonable objection; the equivalent tax in Britain brought the price of a newspaper close to a typical day's wage, making it impossible to publish newspapers for common readers and restricting the flow of information through the press to the well-to-do.

But Hyde is less interested in Adams's Stamp Act grievances than the manner in which he voiced them—anonymously, in an unsigned contribution to an untaxed provincial newspaper. "The man behind this work is not claiming his ideas as his property," Hyde writes, but offering them "for public deliberation." The exchange of private acclaim for public influence is archetypal for Hyde, who believes this form of self-erasing speech was instrumental in the

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development of the American understanding of civic virtue—that is, selflessness performed under spotlights—and is, therefore, the political mode that conjured our public sphere into being.

The copyright legislation of the new nation, when it emerged, resembled the Statute of Anne but bore the signature of self-erasure in what Hyde calls "the Republican Two-Step": "first a private compensation, then a public benefit." A limited term of protection—fourteen years—was offered only as an inducement; the real purpose, Hyde writes, was to ensure the later public life of a given work. The founders considered eliminating copyright protections entirely, and seem also to have briefly contemplated abolishing all rights to property inheritance, one of many reminders that those searching for insight into the American character often err by looking to the agrarian revolutionaries of the aristocratic eighteenth century rather than the industrialists and imperialists of the century that followed.

Hyde praises this "properly limited exclusive right" as "a cultural innovation of the first order." But he might better have said "first class." When Adams wrote his protest against the Stamp Act, he was acting as a political agitator, not a professional author. He was a man who could afford to. In revolutionary America, the value of this kind of civic virtue was real, but it was a philanthropic value, cherished by elites, and the performance of self-erasure was an indulgence of the famous few. As even Hyde acknowledges, when an unknown slave began to publish his own newspaper a generation later, he could not afford to play the game of anonymous civic republicanism; he called it *Frederick Douglass' Paper*.

Yet concerns about class do figure, one presumes, in Hyde's admiration for Benjamin Franklin, the by-the-bootstraps hero of the Transcendentalists, beloved for his capaciousness, his intellectual virtuosity, his public modesty and what Herman Melville once described as his "philosophical levity." "Where is the master who could have instructed Franklin?" Emerson asked rhetorically in "Self-Reliance," proposing Franklin as a model of American genius—self-taught, self-made, sui generis.

But Hyde spends the better part of two chapters interrogating Emerson's conceit and lovingly enumerating Franklin's many instructors (in his experiments with electricity, particularly), including Francis Bacon, William Harvey and Isaac Newton. But more important than Franklin's intellectual debt, Hyde proposes, is the inventor's willingness to pay it forward. "That as we enjoy great Advantages from the Inventions of Others, we should be glad of an Opportunity to serve others by any Invention of ours, and this we should do freely and generously," Franklin wrote in declining an offer to patent the design of his wood stove. When he introduced his lightning rod he was similarly modest, including in announcements about the device neither proprietary claims nor overt self-promotion. Franklin made his fortune as a pioneering printer—"the trade that betrayed all the other trades," Hyde writes, "that prided itself in exposing secret knowledge"—a field he entered by breaking an apprenticeship and establishing his own shop with stolen know-how and stolen content. Hyde calls this escape a "foundational act of American piracy."

But in what way can Franklin instruct us now? His bravura modesty is neither here nor there, and though his amateur approach to experimental science is appealing, it is for our purposes mostly unhelpful. Science needs no kite fliers today, no stove tinkerers or garage bifocalists; science needs money, energy and talent, each of them aggregated at a far bigger scale than any amateur could possibly manage. One cannot build a Large Hadron Collider in one's backyard; one would have a hard time building even a small hadron collider there.

And what of Franklin the pirate printer, Hyde's patron saint of remix culture? For Hyde, as for Lethem, Shields and others, free appropriation and exchange of content is compelling not only for being communitarian but for being candid. For them, piracy of the kind practiced by Franklin the revolutionary printer is an honest acknowledgment that authorship is always plural and culture inevitably pastiche and plagiarism. But this claim depends on a confusion about what constitutes influence and true authorship—an elementary confusion that makes Hyde's invocation of plural authorship ultimately no more compelling than his case for self-erasure. Franklin may have been standing on the shoulders of giants—a phrase made famous by Newton—but his vision of progress as collaboration over time and across distance was no less a vision peopled by ambitious individuals. To suggest that we are all plagiarists because we are all influenced, that we are all plural authors because we are not radically solitary thinkers, is ultimately to make an argument not against intellectual property but from its narrow, proprietary logic, and in particular its defense of a purist, Romantic view of what constitutes expressive work and creative capital.

The desire to preserve what remains apparently pure about the making of art in contemporary life drives much of the argumentation of *Common as Air*, which emerges over the course of its several hundred pages as a treatise on the uncertain fate of expressive work in a culture that celebrates creativity as a corporate value, treats "artisanal" as a euphemism for "expensive" and encourages every bird in the corporate troposphere to consider himself an artist. What Hyde offers in suggestive counterpoint is a double meditation on the work of art in an age of digital reproduction and the art of work in an era of consumer narcissism. Just as the printing boom of Restoration England generated a crisis of authorship amid debates over copyright, the consumer boom of the Internet era has produced a crisis of artistic status amid debates over intellectual property. A sense of threat to art's elevated status is central to the strange yearning for free culture among those who should otherwise hope to make their living from their creative work, and

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to the unfortunate marriage between those writers and artists who claim to revere culture and those consumers, entrepreneurs and Internet absolutists who would like to liquidate it.

"If you have an apple and I have an apple and we exchange apples then you and I will still each have one apple," George Bernard Shaw explained, outlining the distinction between what economists call rivalrous and nonrivalrous goods. "But if you have an idea and I have an idea and we exchange these ideas, then each of us will have two ideas."

The distinction between material goods and those intangible ones undiminished by use has generated many of the liberal objections to intellectual property voiced over the past several hundred years. (Thomas Jefferson: "He who lights his taper at mine receives light without darkening me.") But it animates Hyde far less than does a distinction between the sacred and the profane. In *Common as Air* he advances his argument against the ownership of culture by invoking the contrast between dignity and simony, the crime of purchasing sacraments and ecclesiastical privileges. It is an argument that draws on work by contemporary philosophers Michael Sandel and Michael Walzer but owes more to Immanuel Kant. "In the kingdom of ends everything has a *price* or a *dignity*," Kant wrote in 1785. "Whatever has a price can be replaced by something else as its equivalent; on the other hand, whatever is above all price, and therefore admits of no equivalent, has a dignity."

Of course, that dignity has its own cost—livelihood. Copyright may have been invented in part to enlarge the public domain, but it was also designed to protect and promote the reputation of authors by ensuring them limited ownership of their work—an arrangement that is, lest we forget, a "cultural innovation of the first order." Copyright opponents present themselves as advocates of culture, but their rhetoric masks their true animus, which is fundamentally antipathy to the market. Free culture advocacy challenges the right to profit from creative work, undermines even market-neutral claims on personal authorship and has helped make piracy what Johns calls, perceptively, "the definitive transgression of the information age." Those same free culture warriors that Jaron Lanier describes, in *You Are Not a Gadget*, as "digital Maoists" seem poised to create, out of opposition to consumerism, a consumer paradise—and one in which the open-source imperative to piracy trumps the virtue of productive labor. (Hyde calls this imperative a "copy-duty.") "The pirates, in all too many cases, are not alienated proles," Johns reminds us. "Nor do they represent some comfortingly distinct outsider. They are us." When culture is free it is owned by consumers, and producers are reduced to amateurism—a rigorous and inescapable hierarchy of its own. As Lanier has put it, "If we choose to pry culture away from capitalism while the rest of life is still capitalistic, culture will become a slum."

When culture is free it is owned by consumers, and producers are reduced to amateurism.

There were writers before copyright, of course, but a large class of professional authors did not develop without its protection; there were musicians, too, but a career meant performance rather than composition. Those great heroes of the creative commons, the Delta bluesmen of the early twentieth century, were unable to support themselves even through relentless touring and what seems to be near-constant songwriting and refining. The same is true of the inventive impresarios of bluegrass, early country and folk. One doubts that they would have turned down the opportunity, had it been offered, for royalty payments and songwriting credits. One wonders, then, why anyone would ask a similar refusal from artists today.

In *The Gift*, Hyde compares the sale of artworks with the trade in "sacred properties" derived from the body. But today you can sell sperm, and you can sell an egg. You can rent the use of your womb. Proposing that artwork circulate outside the market seems less an effort in defense of dignity or "sacredness" than simple fear of the judgment of a consumer audience.

The copyright regime lacks dignity, too. The pace of cultural production has increased rapidly over the past century, with creative generations shrinking from several decades to just several years, even as the umbrella of copyright extends further and further from the point of genesis. This is perverse, of course, as is the extension of copyright not just for new works but for very old ones, as was accomplished by the Sonny Bono Copyright Term Extension Act of 1998, and, somewhat less so, for authors and artists who have not even petitioned for protection, as was accomplished by the Digital Millennium Copyright Act of the same year. But these are limited disputes, concerning the structure of particular statutes, and they are best argued at the margins, not as part of a broad campaign against the principles of authorship and cultural propriety.

Hyde has praised the American Transcendentalists and their many fellow travelers as "poet-essayists who never stop being poets," and each of his works of nonfiction tours realms not always contiguous by routes not always carefully plotted. *Common as Air*, like *The Gift* and *Trickster*, is a work of "prophetic essay," and, like those earlier books, does not purport to be a work of advocacy. When Hyde does wax pragmatic, he is careful not to denounce copyright writ broadly or to advocate for the abolition of intellectual property entirely. But these gestures are accommodationist rather than principled; we know that art, for him, means trouble, and that culture is too valuable to render unto Caesar. Yet if we hope to support culture we must find ways to support those who make it, and not chase foolishly into the desert after the coyotes and the pillar saints.

When one peels back the Romantic veneer, one finds throughout Hyde's utopian work a sincere concern for the preservation of our cultural patrimony—though one that is not only infatuated with the sacredness of artistic work but also poorly focused on the commercial threats to it. A campaign, instead, for integrity—defined as the ability of those working in the arts to secure their livelihood with that work—would be more dignified, and certainly more practical, than the free culture crusade against intellectual property. And it might not be, ultimately, the line between copyright and public domain, between private inducement and common benefit, that should most concern us but the placement of the one governing fair use—between a pirated Crusoe, that is, and a legitimate Robinsonade. One need not deprive artists of the right to profit from their work to make that work available to others; nor must we obliterate ownership to preserve access. It is in this sense that one hopes Hyde and his crew, with their exhortations to piracy and the plundering of culture, find themselves with Merton and Whyte on the wrong side of history. ■

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SHELF LIFE

by JOHN PALATTELLA

SEVERAL MONTHS AGO FRANK RICH declared that Jonathan Franzen's bestselling novel *Freedom* (Farrar, Straus and Giroux; $28) had done "for our traumatic time" what *The Great Gatsby* did "for the ominous boom of the 1920s." In case you've somehow missed it, *Freedom* is a novel about the Way We Live Now. Spanning three decades but set mostly in the era of George W. Bush, it is a parable about "the freedom to fuck up your life," to borrow a phrase from one of the main characters, Walter Berglund. Rich's comparison dishonors Fitzgerald, who wrote *Gatsby* with an economy of means and a sense of the tragic that exceeds Franzen's grasp. Fitzgerald was a novelist; in *Freedom*, Franzen is an amateur ethnographer impersonating a fiction writer. His novel is overstuffed with finger-puppet characters and the clutter of contemporary life: there's no reason to know that someone is wearing "Chinese-made sneakers" or that someone else watches *Pirates of the Caribbean* during a transatlantic flight. *Freedom* is crammed as well with rants passed off as dialogue and dialogue that either serves no narrative purpose or reeks of research done in the lifestyle pages of the *New York Times*.

Rich's treatment of *Freedom* as a weather vane is not entirely inaccurate. Taking its cue from a decade's worth of headlines, the novel is more meaningful as news than as fiction. Its popularity is evidence of how badly people crave literary heroes, especially ones whose novels, like pop songs, are of the moment. At one point in *Freedom* Richard Katz, an aging rocker and a college pal of Walter's, goes with Walter to hear a young musician. "It was all in all a great show," Richard admits, despite the performer's "insufferable" self-indulgence and "artful crimes against pop convention." Yet Richard can't help feeling "like the one stone-sober person in a room full of drunks, the one nonbeliever at a church revival." That's pretty much how I feel about *Freedom*.

THE TREE OF CRACOW STOOD AT THE center of Paris in the gardens of the Palais-Royal. It's said that the large, leafy chestnut came by its name from the debates about the War of Polish Succession that took place beneath its branches or nearby. It's also possible that Cracow—*Cracovie* in French—is a pun on *craquer*, to tell dubious stories. Newspapers with information about public affairs were forbidden under Louis XV, and so the streets and cafes ran thick with loose talk about the king and matters of state. People flocked to the Tree of Cracow to hear *nouvellistes de bouche* spread rumors about the court supplied by sources at Versailles. Street singers belted out scurrilous poems about the king and his retinue set to the melodies of popular tunes. "Literature is news that STAYS news," Ezra Pound says in the *ABC of Reading*. In Paris under Louis XV, poetry was often *mauvais propos*, news that gave offense.

In 1749 Parisians feasted on a half-dozen poems that ridiculed Louis XV for being humiliated in foreign affairs by the Treaty of Aix-la-Chapelle as well as in the royal bed by an ignoble mistress. The king ordered a crackdown on unauthorized poetry recitals, and the police rounded up fourteen suspects, mostly students, clerks and priests, and gathered evidence. The investigation is the subject of Robert Darnton's fascinating *Poetry and the Police: Communication Networks in Eighteenth-Century Paris* (Harvard/Belknap; $25.95). As Darnton retraces the steps of the police, he branches off into explorations of the world of ordinary people under the ancien régime and the formation of public opinion in an oral culture. He also has a polemical aim. "The marvels of communication technology in the present have produced a false consciousness about the past," he writes, "even a sense that communication has no history" before the days of television and the Internet. Darnton deflates that illusion by showing how poems seeped into the public sphere as they passed through oral and print media: first copied on scraps of paper, then dictated by one person to another, then memorized and sung to an audience. For Darnton, poetry was an information network long before networks were news.

BIBLIOTHÈQUE NATIONALE DE FRANCE, DÉPARTEMENT DES ESTAMPES

A Parisian street singer, 1789

FOR LONG PERIODS OF HIS CHILD-hood, Jeremy Harding lived by the River Thames in tastefully run-down establishments set amid embankments, overgrown towpaths and sodden flood plains. *Mother Country: Memoir of an Adopted Boy* (Verso; Paper $17.95), a delicate and absorbing account of Harding's investigation into the circumstances of his adoption in 1952, owes much to water as well. Harding's approach to his past is more fluid and invigorating than those now promised by memoir: tiresome self-pity, tawdry personal revelation, graceless self-invention. Harding is reticent, and fiercely so; it is left to the book's front matter to disclose that its author is an accomplished journalist and a contributing editor at the *London Review of Books*. Reticence serves Harding well. It fosters curiosity, patience and tact, which allow him to conjure up from the sediment of public records and spillways of memory the hitherandthithering courses of two lives: those of Margaret Walsh, his natural mother, and of Maureen Harding, his adoptive mother.

Harding was 5 when he learned from Maureen that he had been adopted. His mother, she explained, was an Irish girl who had worked in a shop. Maureen also regaled Jeremy with stories about her own youth: rides in a horse-drawn carriage trailed by Dalmatians; skiing trips to Chamonix. With persistence and luck, Harding learns his natural mother's identity and discovers, contrary to his belief, that Margaret is alive and living in West London near the housing projects where she was pregnant with him. But the book's big surprise concerns Maureen. From discussions with old friends of Margaret's, Harding learns that there were no Dalmatians or skiing trips for Maureen. Rather, there was a childhood in public housing and later a marriage (her first, and not to Jeremy's adoptive father) that catapulted her from a hardscrabble life into a world of leisure. Maureen adjusted her speech, and past, accordingly, and never looked back. In the mother country, Harding explains, without ever raising his voice, class can be a trap, a miasma of murk and discoloration. ■

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The Impasse

by NATASHA WIMMER

Depending on how you look at it, the noir novel is either perfectly suited to Mexico or beside the point. It's hard to imagine a plot that somehow encompasses the August massacre of seventy-two migrants in the northeastern border state of Tamaulipas, for example, or the Zacatecas jailbreak in late May when fifty-three inmates simply walked out of their cells. The scale of real-life crime is such that it dwarfs the classic private eye and makes him irrelevant.

And yet Martín Solares's first novel, *The Black Minutes*, an uncommonly nuanced neo-noir—set, as it happens, in Tamaulipas—may be exactly the right book to read at the end of 2010, a particularly dark year in recent Mexican history. It's crime fiction, but it's also a meditation on corruption, and it captures the kind of nightmarish helplessness that many feel in the face of the tide of narco-violence sweeping the north of Mexico. In Tamaulipas alone, assassinations since June include the front-runner candidate for governor of the state and two mayors of a single small town over the course of two weeks. On September 19, after the killing of a photography intern, the Ciudad Juárez paper *El Diario* ran an extraordinary editorial asking the drug gangs for instruction: "We want you to explain to us what…we are supposed to publish or not publish…. You are at this time the de facto authorities in this city." Scraping away some of the cool remove of the traditional noir, *The Black Minutes* gives a gorgeous, suffocating sense of life in Mexico's sweltering northeast and an equally smothering sense of a justice system in which the concept of justice has been leached of meaning.

Solares evokes the impasse of the struggle against crime in Mexico with an ingenious device: a story that begins in the present day and skips back to the 1970s. The novel opens on a bus traveling south through Tamaulipas down to the gulf coast port city of Paracuán (*a k a* Tampico). When the bus is pulled over by some cops in pickups, a young reporter (drinking yogurt and reading St. Ignatius's *Spiritual Exercises*—what hope does he have?) is escorted off and seems likely to come to an unfortunate end.

Natasha Wimmer is the translator of Roberto Bolaño's The Savage Detectives, 2666 *and, most recently,* Antwerp.

VESTA MÓNICA HERRERÍAS

Martín Solares

The Black Minutes
By Martín Solares.
Translated by Aura Estrada and John Pluecker.
Black Cat. 436 pp. Paper $14.

As it happens, however, he is rescued by his seatmate, a man he takes for a gun-toting rancher but who happens to be El Macetón, otherwise known as Agent Ramón Cabrera of the Paracuán Municipal Police.

Cabrera is the first of Solares's two detectives, and like the classic noir hero, he's a gruff, reluctant avenger of wrongs. So when he's summoned to the chief's office and assigned to a case belonging to a co-worker who already holds a grudge against him, he's far from content. And when he gets a look at the dead man, he knows things have gone from bad to worse: "Damnation, it can't be, he thought, it's the kid with the yogurts."

As Cabrera investigates further, he learns that Bernardo Blanco, the young reporter, had been working on a story about a series of crimes committed in 1977. Four young girls were found dead over the course of several months, and the killer, dubbed the Jackal by the local papers, was eventually determined to be a delivery truck driver named René Luz de Dios López. But as Cabrera discovers from newspaper research full of '70s marginalia ("In the movie theaters, 007's *Live and Let Die*, *Papillon*, *The Exorcist*, *El santo oficio* by Arturo Ripstein, and *El llanto de la tortuga* with Hugo Stiglitz"), the bodies of girls kept turning up even after René Luz de Dios López was locked away.

Just as Cabrera is making some progress—and just as the reader is growing fond of him—Solares cuts away to what turns out to be the real story he has to tell, which is that of Vicente Rangel, another reluctant cop and the original detective on the case of the 1977 killings. Rangel's former career as a guitarist for crooner Rigo Tovar is betrayed by his Sergeant Pepper mustache and sideburns, and also by an inconvenient sensitivity that makes the palms of his hands crack and bleed when he's under pressure. His refuge is an old wooden house a ferry trip away from the city, where he lies in his hammock listening to music and drinking.

As the reader adjusts to the temporal shift, correspondences reveal themselves: Cabrera's boss, Chief Taboada, was once Rangel's cocky young nemesis, nicknamed El Travolta, and many of Cabrera's other colleagues are also Rangel's. In fact, it later becomes clear that Cabrera must have worked at the office at the same time as Rangel, but he goes unmentioned in Rangel's story. The effect is curious and satisfying. Since we already have some idea of where the characters end up, we seem to glimpse their fates in their earlier actions. This creates a general sense of foreboding: the knowledge that El Travolta becomes police chief and that Rangel is nowhere to be seen when Cabrera takes up the thread of the story sheds a grim light on Rangel's narrative.

Like Cabrera, Rangel finds himself assigned to a case that belongs to someone else: this time, the vindictive El Travolta. On a day when El Travolta is late to work, Rangel is called to a downtown restaurant to investigate the death of a 9-year-old girl whose body has been dismembered and dumped in a bathroom stall. She's the second girl to be found, and the bodies of two more soon turn up. All are covered with the remnants of their school uniforms and marked with a three-letter acronym. For a while, Rangel flounders, drifting in a sea of memories and atmospheric flashbacks.

Solares has a weakness for period detail that can occasionally seem gratuitous, but his sympathetic evocation of the late 1970s is one of the strengths of the book, as is his depiction of the city of Paracuán/Tampico, his hometown. The novel is steeped in the baking heat of un-air-conditioned cars, and Cola Drinks billboards loom everywhere over the city ("a woman picking up a glass of petroleum-colored liquid overflowing with ice"). One of the weirdest and most memorable episodes in the book involves a cameo by the author of *The Treasure of the Sierra Madre* (the movie version of which was partly filmed in Tampico), who tells Rangel a story about a wealthy man who turns into a tiger by night and preys on his employees. This man is a scion of the Williams family, owners of the Cola Drinks empire. And as it turns out, Jack Williams, the son of the current Williams kingpin, is a

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prime suspect in the killings of the girls.

Reveries are stripped away, however, when Rangel wakes up from a dream with a hunch that leads him out of Paracuán and into the barren country north of the port and south of the border. Look at a map of present-day Mexico and you'll see that this is still an area of few roads, carved up into *ranchos*, the ranching estates of the powerful. This is the territory of the Tamaulipas massacre, a vast no man's land where druglords hold sway. In Solares's novel, the men in power are different, but the lawless atmosphere is the same. It's at this point in the novel when desperation gives way to hopelessness, and when it becomes evident that just because a crime is solved, a happy ending doesn't necessarily follow.

Mexico has always been a mecca of noirish atmosphere: it's the place, after all, where American noir movie antiheroes so often end up. Think of Charlton Heston in *Touch of Evil* or Elliott Gould in *The Long Goodbye*. Yet noir is also a quintessentially American genre, so that homegrown Mexican noir (especially early on) can often seem a curious hybrid of hard-boiled clichés and local themes and settings. The history of Mexico's noir is generally believed to begin with the 1969 novel *El Complot Mongol* (The Mongol Conspiracy), by Rafael Bernal. At first, the novel seems to echo *The Manchurian Candidate*, published a decade earlier. A Chinese plot to assassinate the US president on a visit to Mexico has been discovered, and Bernal's detective, Filiberto García, is assigned to assist a team of CIA and KGB agents. But the purported international intrigue is gradually revealed to be a cover-up for local corruption. Under the guise of guarding against foreign machinations, García's bosses are plotting to kill the Mexican president.

El Complot Mongol isn't available in English, which is too bad, because it's a surprisingly crisp and moving exemplar of the genre, despite Chinese-Mexican dialogue of the "flied lice" variety. Startlingly, it links the 1910 Mexican Revolution with the 1960s underworld (García fought in the Revolution as a young man); it's as if Bonnie and Clyde were to confess that they learned to shoot in the ranks of the Union Army. As García says, "Killing isn't a job that takes up much of your time these days.... During the Revolution it was a different story, but I was a boy then." Killing during the war was something like a noble vocation (though even that is questionable); now it's simply a job. And since it takes up less of García's time, it allows more room for reflection—not a good thing from García's point of view.

The novel borrows the stylings and brand-name trappings of American noir (García wears "colonia Yardley" and has Sears furniture in his apartment), but it is decidedly Mexican in context and geography. Mexico City, which will become the setting of much classic Mexican noir, is García's home base, and there is a tint of fatalism to García's reflections, an attitude that seems to owe more to Octavio Paz's typology of Mexican malaise in *The Labyrinth of Solitude*—the sense (so often borne out by Mexican history) that defeat is foreordained and victimhood inevitable—than to American hard-boiled stoicism. García isn't an independent operator by choice. He would prefer simply to take orders from his superiors, but his superiors repeatedly let him down. In a brilliant scene toward the end of the novel, he forces a crooked politician to kill his crony, just to teach him how it feels to kill.

Despite some serious moments, *El Complot Mongol* is a light read, more camp than chiaroscuro. Operating in this same vein is Mexico's best-known contemporary noir writer, Paco Ignacio Taibo II. Taibo is one of the few writers of Mexican noir (if not the only one) who's been extensively translated, and many of his novels are available in English, including several from a series featuring private detective Héctor Belascoarán Shayne, a one-eyed sleuth with a past defined (like Taibo himself) by the '60s student uprisings. Taibo's novels are desultorily plotted, and Shayne has a hangdog vanity that may put some readers off; but Taibo's quirkiness isn't just boilerplate, and his reflections are often charming and unexpected.

Just as Latin American writers tend to be more politically engaged than their US counterparts, Mexican noir tends to be more political than American noir. Taibo represents an extreme in this regard. He co-wrote one novel, *The Uncomfortable Dead*, with the masked rebel leader Subcomandante Marcos (they alternated chapters), and he is the author of a work of nonfiction titled *68*, about the Tlatelolco student massacre in Mexico City in 1968, in which he gives a firsthand account of the democratic passions of the 1960s and describes how hopes were crushed when some 200 protesting students were killed by undercover military police. He is also an organizer of his own colleagues (he runs an annual crime fiction festival in Spain and is the editor of the collection *Mexico City Noir*, recently published in the United States) and an occasional spokesman for them. It was

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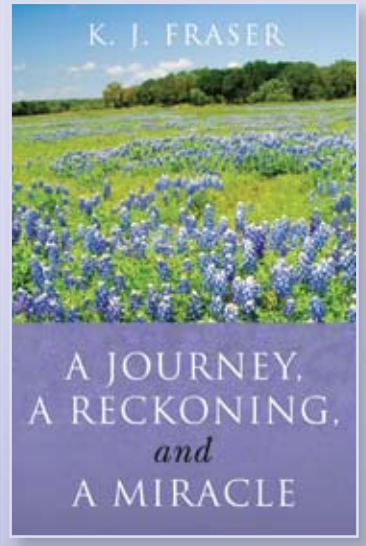

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he who coined the term "*neo-policíaca*" (or "neo-noir"). By this, he explains, he means a kind of fiction that meshes classic noir with the "recurring theme of the problems of the State as a generator of crime, corruption, and political arbitrariness."

By this standard Solares is also a neo-noir writer, but *The Black Minutes* otherwise has little to do with Taibo's tongue-in-cheek diversions. His double narrative may be spotted with a few holes and lacunas, but the general impact of the plot is stunning. His characters simultaneously move toward resolution and the void, each success paradoxically dragging them down. Every time Rangel tracks down a key witness or uncovers a critical clue, he's filled with dread at the thought of the revenge El Travolta will exact. But even El Travolta is a peon, as is revealed in a spiral of political machinations set in place as the novel nears its denouement. El Travolta's fate is perhaps the novel's best illustration of the warping effects of the Mexican system of impunity. By selling out his colleagues and the truth, he buys himself the job of police chief; but he too is a victim, an increasingly pathetic figure destined to be chewed up and spit out. ■

In Our Orbit

Dean's Way

by KATE MURPHY

During the run-up to the midterm elections, the overwhelming question has been whether Congressional Democrats will retain their majority. Although it's not uncommon for the party in power to lose ground during the midterms, the prospects for Democrats this year are particularly bleak. The president and his Congressional majority are contending with a lack of enthusiasm among Democratic voters who see little evidence of the change they hoped for when they voted for Barack Obama in 2008. If any supporters are still chanting "Yes, we can," they have been drowned out by the exhortations of Glenn Beck and Sarah Palin to "take back America" and the din of commentary about Park51, the planned Islamic community center in Lower Manhattan branded the "Ground Zero mosque" by its critics.

Ari Berman's *Herding Donkeys: The Fight to Rebuild the Democratic Party and Reshape American Politics* (Farrar, Straus and Giroux; $26) analyzes the Democratic Party's success in 2008 and offers solid insights into why so many are disillusioned with Obama in 2010. Berman, a correspondent for *The Nation*, argues that Howard Dean's unsuccessful bid for the 2004 Democratic presidential nomination was the foundation for Obama's victory. Campaign technologies and strategies that Dean developed but whose potential went unrealized would be refined and employed more successfully by Obama. Berman writes that the Dean campaign "built a plethora of new tools"—such as transmitting campaign information via text message and connecting Dean organizers to one another on a social networking site—"that would fundamentally change political campaigns and the nature of public communication." Not only did Dean's campaign grasp the importance of the burgeoning blogosphere to policy wonks; it proved that the Internet could be used for organizing people online and bringing them together offline too. Dean was the first politician to raise large sums of money through small donations online.

Although both Dean and Obama played to widespread public disappointment with George W. Bush and his policies, the most important cue Obama took from Dean was to pursue the "fifty-state strategy." Berman notes that in 2004 "Democrats shifted toward hapless regionalism"; they abandoned the South in an effort to devote resources to more winnable states. Dean, however, wanted to go to "places where nobody else goes," like North Carolina, which Democrats like John Kerry ignored, figuring they were too red to turn blue. This spirit of inclusion would be the hallmark of Obama's campaign; as he stated at the 2004 Democratic National Convention, "there's not a liberal America and a conservative America—there's the United States of America."

Herding Donkeys blends a real-time behind-the-scenes account of the Dean and Obama campaigns with Berman's analysis of events. Just as Obama framed his campaign as being not about him but his supporters, *Herding Donkeys* is about not only Obama and Dean but also their grassroots bases. Berman is at his best when recounting the stories of these organizers and the communities in which they worked during the election. One such organizer was Joe Perez, a former bus driver from Greeley, Colorado. After an Immigration and Customs Enforcement raid of a meatpacking plant resulted in the deportation of dozens of Greeley residents, 63-year-old Perez decided to organize for the first time in his life, starting the group Greeley for Obama and running the operation out of his garage. "The campaign in Greeley became a point of pride among Hispanic activists," Berman notes.

Berman argues that for all of its innovation and inspiration, the Obama campaign was myopic: "Obama's movement…never adequately prepared for the day after his election." Obama had united a diverse base, including many who did not identify as Democrats, at a time when America hungered for, yes, hope, change and inclusion. But in attracting a wide variety of voters and supporting candidates across the Democratic spectrum, Democrats lost ideological cohesion on issues like healthcare reform, abortion, gun control and gay marriage. The enthusiasm was for Obama, not necessarily his platform.

Those voters who did support Obama's progressive objectives had formed the base of the campaign's grassroots organization; but once in office, Obama seemingly turned his back on them. He staffed the White House with Washington insiders and snubbed Howard Dean along the way, which Berman largely attributes to chief of staff Rahm Emanuel's antipathy to Dean. Emanuel embodies the inside-the-Beltway attitude that has disappointed many erstwhile Obama supporters. He famously referred to Democrats who were organizing for more progressive healthcare reform as "fucking retarded." As Dean told Berman, "That's basically saying to your own people—you got us here, now FU."

For Berman, all is not lost. "It's not too late for Obama to turn his presidency around, reconnect with the supporters who propelled him to the White House, attack the gridlock in Washington and reclaim his ambitious legislative agenda," he wrote in September. *Herding Donkeys* stresses the importance of grassroots supporters to Obama's win in 2008 and demonstrates that a return to such bottom-up organizing could be the key to success, not only for electing Democrats in 2010 and beyond but for pursuing the bold policy initiatives the country so desperately needs. ■

Kate Murphy is assistant editor and research director of The Nation.

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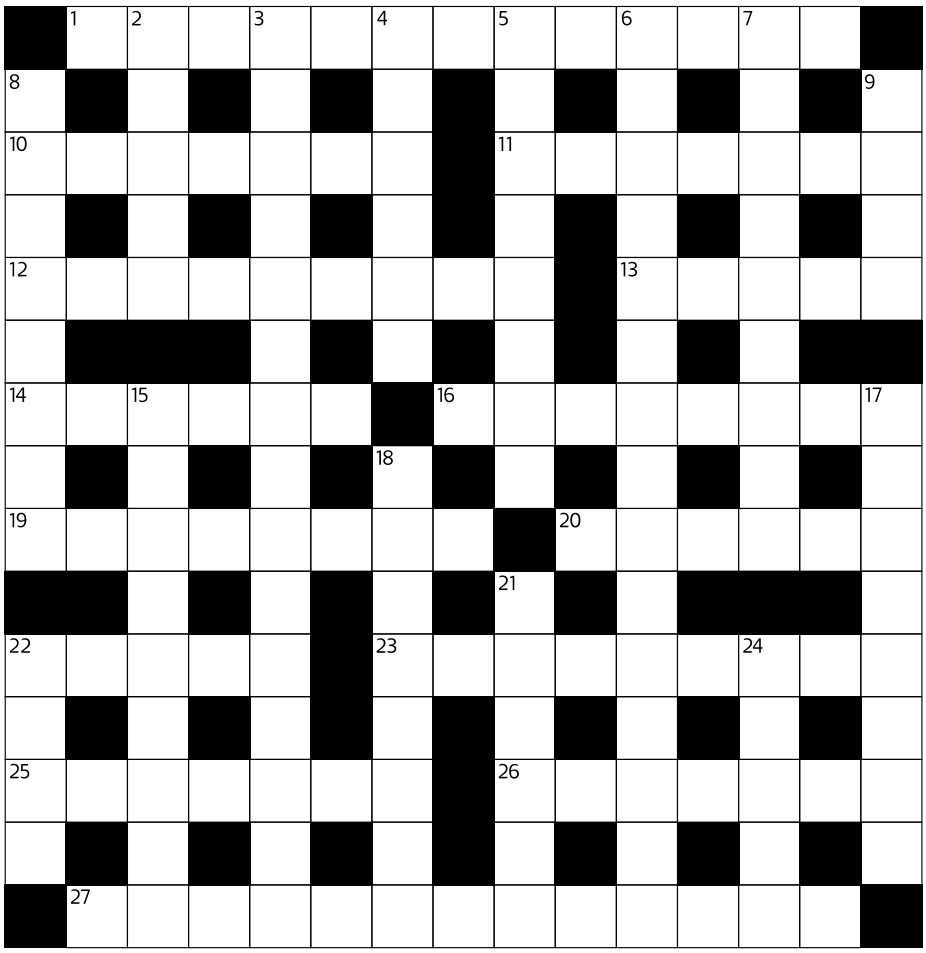
Puzzle No. 1607

FRANK W. LEWIS



ACROSS

1 A bad time for gulls? (5,5,3)

10 Let loose around the incline, one doesn't tread lightly this way. (7)

11 The Air Force story isn't likely to be true, but it's pleasant. (7)

12 A new car lot, not used in 5, probably. (9)

13 Match score? (5)

14 The ball might be where roles are assumed. (2,4)

16 Dip in one straightened out, and you'll get held down. (8)

19 Giving a gin sling to the general? (8)

20 You might get away from margin if you do, and use capital to get started. (6)

22 One shouldn't remember drinking from it. (5)

23 Such things are only found in a wild state. (9)

25 Portia's confidante. (7)

26 As the poet says, open with a standard amount, and run! (7)

27 Nothing on cattle land takes flower, but the bearer might expect a hitch in the ceremony. (6,7)

DOWN

2 Physically unattractive stretch of land? (5)

3 See 9 down

4 Raising cattle with the French is not very effective. (6)

5 Saul or Samson, for example. (8)

6 Runners don't always find this, unless protected, and loners wouldn't seek it. (6,2,7)

7 When someone's brought in with this, they might expect to 26 in the theater. (9)

8 Carrying the hose, perhaps. (8)

9 and **3** A viper's head might show this shortly. (4,9,6)

15 Abstract art repels one who might be expected to cover the wall. (9)

17 Acted perturbed, when acted about that place! (8)

18 Brood, perhaps. (8)

21 A little way to go on wheels or walk casually. (6)

22 With an extended stretch of pine? (4)

24 It might be expected to follow a good act. (5)

This puzzle originally appeared in the November 15, 1975, issue.

SOLUTION TO PUZZLE NO. 1606

L	E	A	S	T	■	A	L	B	A	T	R	O	S	S
I	■	P	■	H	■	F	■	U	■	H	■	U	■	T
F	O	R	G	E	T	F	U	L	■	R	A	T	I	O
E	■	O	■	I	■	L	■	L	■	O	■	W	■	P
R	U	N	A	R	O	U	N	D	■	T	W	A	N	G
S	■	S	■	S	■	E	■	O	■	T	■	R	■	A
■	■	■	■	■	S	N	U	G	G	L	E	D	U	P
E	■	I	■	C	■	T	■	D	■	E	■	S	■	S
D	I	S	C	L	O	S	U	R	E	■	■	■	■	■
U	■	O	■	E	■	O	■	U	■	M	■	O	■	S
C	E	L	I	A	■	C	O	M	M	O	N	L	A	W
A	■	A	■	N	■	I	■	M	■	M	■	D	■	E
T	O	T	E	S	■	E	X	O	N	E	R	A	T	E
E	■	E	■	E	■	T	■	N	■	N	■	G	■	P
D	E	S	T	R	O	Y	E	D	■	T	E	E	M	S

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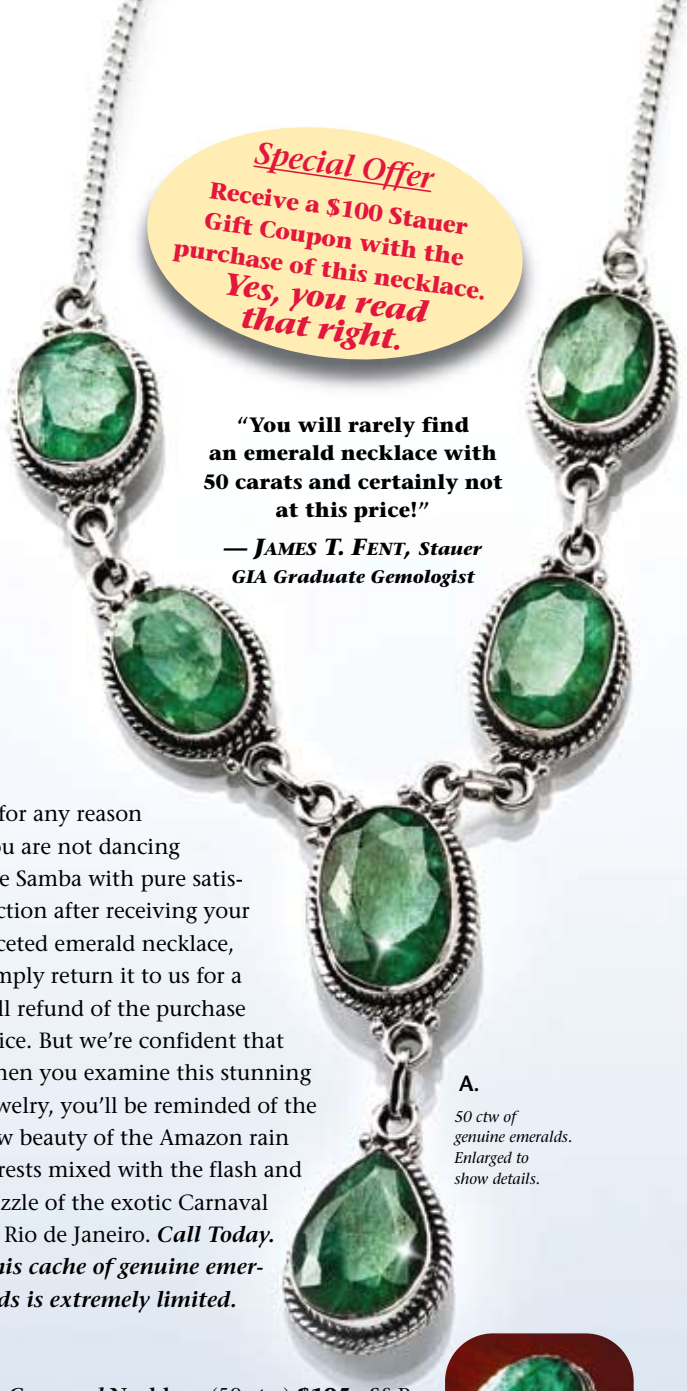

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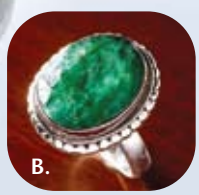
B.

C.

D.

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